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# THE UNIVERSITIES OF SCOTLAND

## PAST, PRESENT, AND POSSIBLE.

# THE UNIVERSITIES OF SCOTLAND,

## PAST, PRESENT, AND POSSIBLE;

WITH AN APPENDIX OF DOCUMENTS RELATING TO THE HIGHER INSTRUCTION.

BY JAMES LORIMER, JUN., ESQ.,

ADVOCATE.

"He (Lord Panmure) was quite ready to admit, that there were matters of which the people of Scotland had reason to complain, and one of these was the endowment of chairs in the National Universities. That was a subject that well deserved the consideration of the Government. It was one which he believed the Government were disposed to consider, and he should be very glad to hear his noble friend at the head of the Government, or the Chancellor of the Exchequer, state, that he had at his disposal funds wherewith to place the Professorships of Scotland on a more respectable footing than they were at present."—*Debate in House of Lords, April 3.*

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# PREFACE.

THE substance of the following pages has already, to some extent, appeared in Articles which I have contributed, from time to time, to the *North British Review*. These Articles, notwithstanding their many defects, having served the purpose of directing the attention of a portion of the public to the want of adequate provision for the higher instruction, and for a learned class in Scotland, an opinion was expressed by several friends in whom I had confidence, that the views which we held in common would be more readily disseminated by their republication, in a more complete and more accessible form, than by any other means which we could at present command. The hope of such a result is my only apology for again offering to the public, observations which have already received a degree of attention which, I am well aware, is more than commensurate with their merits.

For the interesting Appendix on the qualifications which have hitherto been, and which in future are to be, exacted from Candidates for the Bar, I am indebted to the kindness of the Dean of Faculty, to whom, as well as to those friends who have favoured me with their remarks and their criticisms, both whilst the present sheets were passing through the press, and when the Articles of which I have spoken originally appeared in the Review, I beg to offer my warmest thanks.

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THE

# UNIVERSITIES OF SCOTLAND,

## PAST, PRESENT, AND POSSIBLE.

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## CHAPTER I.

### OF THE NECESSITY OF THE HIGHER INSTRUCTION, AND THE DUTY OF SUPPORTING A LEARNED CLASS.

SECT. 1. *Present Tendencies more favourable to the Lower than the Higher Instruction.*

Of all the duties of the Christian citizen, that which the more conscious portion of society, in our own time, has most clearly recognised and most consistently acted upon, is that of raising the degraded and downtrodden. Wherever we have seen the possibility of playing the good Samaritan's part, we have not—as a community, at all events—passed by on the other side. In our penal legislation, the good of the criminal has been kept in view more carefully than that even of the society against which his crimes were committed; and our poor laws have been constructed, our colonization organized, and our taxation imposed, upon principles which had continual reference to the condition of the helpless. Private enthusiasm, and individual munificence, have naturally been directed, in the general case, to the same objects which had called forth the common zeal; and indigence, vice, and suffering, in every form in which they were known to manifest themselves, from neglected infancy to forlorn old age, have been alleviated by every means which ingenuity could suggest. Nor is it directly alone that we have attempted to heave off this many-sided incubus of human woe. Ignorance was no sooner recognised as the most prolific source of vice and

misery, than, abandoning the treatment of symptoms, we proceeded to attack the root of the disease, and, for the last twenty years, the education of the people has been the scheme of social improvement to which all eyes have turned with the liveliest hope.*

But whilst with hearty and genuine sympathy we second tendencies which we regard as both sound and hopeful, we must not conceal from ourselves that here, as elsewhere, the effect of bringing one side of a question, or one portion of a subject, very prominently into view, has been to throw the rest of it into deeper shadow, and that, whilst we have been striving to refine and elevate the masses of a hitherto too much neglected population, and to apply to degrading sensuality and gross vice the antidote of rudimentary knowledge, we have not been equally alive to the necessity of fostering those institutions which profess to cultivate the higher intellectual powers, and to supply guidance and nourishment to the more active moral life of the community. Is, then, our whole duty as men or as citizens fulfilled when we have spread among the lower, or even a portion of the middle classes, such an amount of knowledge as their circumstances and position in life may have rendered attainable; and is every effort of intelligence beyond this to be left to the guidance of accident, aided by such means as, centuries ago, our ancestors had provided for the purpose? Have our wants, which in the lower departments of mental culture have so marvellously increased, remained stationary in the highest alone? Has God made men and communities responsible for his gifts only up to a certain point? or will the indefinite multiplication of ministers in the vestibule of the temple of knowledge exculpate us for neglecting the support of those whose function it is to watch over the sacred fire within? The learning of a community is the fountain from which civilisation flows forth to it like a bountiful river; and if so much of our duty consists, as we now acknowledge, in devising the means of duly disseminating those vivifying waters over the social field, shall we be blameless if we fail to see that the source is pure and the supply abundant? But in thus subordinating the interests of the higher instruction to the lower,

* "Popular education may be said to be almost entirely the creation of the present century."—Official Report on Education in Great Britain, published by authority of the Registrar-General, p. 11; in 1833 Government first proffered its aid, p. 13; since the Reform Bill epoch, the nation has been almost unanimous in striving to extend the benefits of education to all.

we have not only failed to provide for the upward movement of society in its ultimate manifestations, but, however vigorous may be the signs of life which for a time our social development in its earlier stages puts forth, we have been endangering the efficiency of those popular educational institutions, and the permanence of those very individual and citizen virtues, on the possession of which we have hitherto so justly congratulated ourselves. In our zeal to bring all classes up to a certain standard, we have forgotten, that, but for the existence of a far higher standard on the part of the few, the many could not have attained to their present position, that they could never go beyond it, and that even in the meantime their hold on it would be insecure. Universal popular education, whenever it shall arrive, like our laws, our liberties, and our other social institutions, will be a result of our general civilisation, and this civilisation we must regard as a gift of the few, rather than a conquest of the many. By no half-intelligent army, however numerous, has one fact which has advanced it, one law which has regulated it, one institution which has secured it, been won. In the office of the pilot there is speedily a limit to the division of labour, and ten men, half acquainted with its duties, will be a sorry substitute for one who knows them thoroughly. If we had had no pilots specially qualified our voyage hitherto could not have been accomplished. It is to the influence of the higher educational institutions of our country that the very existence of the lower ones must be traced;—it is to the knowledge which they have rained down from above that the wide field of popular instruction is indebted for its present verdure. If John Knox had received no higher instruction than that of one of his own parish schools, the schools themselves would never have existed.

But, obvious as the consequences of the neglect of the higher instruction must appear to those who have bestowed any serious consideration on the subject, we believe that we ourselves, in common with other writers, have taken them for granted rather too hastily; and to this circumstance is probably to be attributed, in no small degree, the little practical activity which has hitherto been called forth by repeated demonstrations of the fact,* that the provision for supporting a literary and intellectual life in

* We would particularly call the attention of our readers to a series of spirited pamphlets by Professor Blackie, published now many years ago.

Scotland is so scanty and ill organized. In saying this we would by no means be understood as insinuating that either our conclusions, and those of our friends, or the premises from which we deduced them, were denied. On the contrary, they were admitted with a facility which a greater knowledge of mankind would have enabled us at once to set down as deceptive. It is not as regards religious doctrines alone that a distinction must be made between a ready acquiescence and a living faith, nor is it in these only that a nominal believer is a more dangerous enemy than an avowed infidel.

SECT. 2. *Signs of a Reaction in favour of the Higher Instruction.*

But though we may have erred in assuming that all who do not openly oppose, or who, from motives of convenience, even ostensibly second our views, are heartily on our side, we should interpret ill the character of our age in general, and do grievous injustice to our own country in particular, if we failed to recognise that now in Scotland we may confidently look, if not for an efficient support of learned institutions, at least for a wider popular sympathy with intellectual and moral activity, than we could previously have hoped for. Not only by the opinions which they express, but by the far surer test of the books which they read, we know that a very large and most influential portion of our countrymen are deeply and sincerely interested in whatever they consciously feel, or even conscientiously believe, will enlighten their understandings, refine their tastes, or purify their hearts. Though we have fewer leading individual thinkers, and literary guides, in Scotland at present than at many other periods of our history, there is a wide-spread seriousness of purpose, and a thoughtfulness in the lives of the whole intelligent community, which bids fair to produce an atmosphere out of which, if not a higher and more creative order of minds, at least much clear insight, and many important improvements in our educational institutions and social arrangements, may be expected to arise.* But we must remember, that neither in the commu-

* Apart from the encouraging symptoms of an awakened interest in the higher instruction in a wider sphere, which some recent Imperial enactments have exhibited, we have had, in this country, various unequivocal signs of reaction in its favour. An association has been formed for the purpose of bringing the inade-

nity nor in the individual will spontaneous development, however vigorous, supply the place of conscious effort. It is true that, with little sacrifice or effort of any kind, the public have already become the most generous patrons of literature in its popular forms. As regards that superficial enlightenment, of which cheap books and lectures are the vehicles, there is no longer any want of sheltering institutions or artificial culture. But the grain which nourishes, and the herb which heals, most frequently do not grow spontaneously, even in a fruitful soil, and so it is with the most nutritious and indispensable products of mind. If we do not sow them, neither shall we reap them. If we do not bring within the reach of some considerable portion of the community the possibility at least of studious leisure, we cannot look for those results to individuals and society which nothing but leisure and study have ever yielded to mankind.

But we are gravely mistaken, if the wide-spread sympathy with popular education and popular literature, to which we have alluded, does not supply some guarantee for the future support of its systematic cultivation; and in the causes which have hitherto starved and crippled the learned institutions of this country, we think we can trace, even now, symptoms of a temporary character. The spirit of dissemination, for the present, has drawn off the sap from the higher studies, and the tendency of our civilisation is to spread its roots in the soil, not to throw its branches boldly into the air. But we are persuaded that the principle of social life has lost nothing of its power, and when the process of growth recommences, when the public interest in the higher education revives, it will draw its nourishment from a far wider class than it ever before could appeal to. [Our present institutions of learning were founded in a great measure by the munificence of an age in which cultivation was confined to the few. What might we not expect now if a similar sympathy could be evoked on their behalf from the vastly broader basis of the popular intelligence of the 19th century?] Besides, it is obvious that the Universities of Scotland labour, in the meantime, under

quacy of our highest educational institutions under the notice of the Government and the public, (*vide* Ap. C;) steps have been taken to raise the qualifications of general attainment required for admission to several of our learned bodies, (*vide* Ap. A and B;) and there is reason to think that, in very influential quarters, a disposition exists to afford the most indispensable of all aid, provided always, that it is claimed with such vigour as to justify concession.

a double disadvantage; for whilst they have scarcely yet become objects of interest to the whole community, they have already lost, to some extent, the protection of those classes by which the community in former times was led. To the clergy and nobility, (themselves greatly diminished in influence,) they stand in a relation far less intimate than that which they formerly occupied, and from the middle class of laymen, who now rule the destinies of the State, they have not yet received that enlightened sympathy which has already been extended to more popular educational institutions. Even in their internal organization, the Universities have not been able wholly to resist the spirit of the age, which forces upon them that more liberal character which already belongs to our other institutions; and in proportion as they comply with it, they cut themselves loose from what remains of their mediæval sources of nourishment. That they have no choice in following the general line of march, must be clear to every one who is not blind to the character of the time; and in this case it is obvious that the question of whether or not they shall succeed in expanding themselves so as to respond to the greatly increased requirements of modern days, depends entirely on their success in enlisting the sympathies of the general intelligent public in their favour. It is on the Scottish people, in this sense, that the Scottish Universities must throw themselves. If the general voice pronounces that an efficient instruction of the highest kind, and a strenuous cultivation of literature, science, and philosophy, is not less indispensable to national wellbeing than a widely diffused superficial intelligence, then our country is neither so poor as to be unable to supply the conditions of their existence, nor so weak as to be unable to make its claim heard by the Legislature. But our first concern is with public opinion. Even before we attempt to make a case, we must if possible gather an audience, and it is with this view that we now address, not to the gifted few but to the earnest many, a few plain observations on the political, social, and religious influences of the higher instruction and of a learned class.

SECT. 3. *Of the Political and Social Bearings of the Higher Instruction.*

A great living philosopher succeeded in making one hundred

and six witnesses agree in pronouncing the intuitive beliefs of mankind to be the foundations of philosophy, and if he had inquired into their political creeds, they probably would have had as little hesitation in declaring the aggregate result of the convictions of the community to be the root of legislation in all states that are entitled to be denominated free. Whatever may be the form of government, if it is to fulfil the condition which Aristotle pointed out once for all* as the test of the legitimate, as opposed to the illegitimate or degenerate government; *i.e.*, if it is to be a government, not of a class, but of the whole, its acts must be in conformity with this common conviction. It is in this that the monarchy differs from the tyranny, the aristocracy from the oligarchy, the free state from that which is governed by and for the rabble. Now, this common conviction, or common-sense, is neither the highest and latest discovery of the most advanced individual members of the community on the one hand, nor is it the unaided and unguided opinion of the majority on the other. If it were the former it would be before the age, if society be progressive, and in any case would be above it; and, consequently, the institutions resulting from it would be suited to the requirements, not of the whole community, but of a very small portion of it. Again, if it were the latter, synonymous, that is, with the opinion of the majority, it would inevitably be behind the age, because the majority are not, and never can be, the true exponents of the enlightenment of which the age in which they live has taken secure and permanent possession. It is still but a minority who see even what has been fairly and conspicuously brought to light. Wherever this common sense has been attempted to be discovered by the mechanical process of counting voices, the real centre of gravity has not been found, and the consequence has been the instability of the social edifice. The moral influences, which in society carry in the end even physical force along with them, are all above this supposed centre; and to exclude their operation is impossible. In the legitimate state, which takes cognizance of them, they are elements of advance; in the illegitimate state, which ignores them, they are elements of disorganization. In either case they determine the current of events; and it is these

* Politicor. lib. iii. cap. v. ὅταν μὲν ἑ τῶ, &c.

influences, and this intelligence,—taken along with the opinion of the majority *as modified by their action*,—which form the common sense, the popular spirit, in its widest acceptation, which not occasionally or accidentally, but universally and necessarily, and this whether speaking through the mouth of a Parliament or a king, is the source of all genuine law-giving. Now, the question which is important for our present subject is this,—can you supply these influences, and adequately deal with the common conviction, as thus explained, by anything short of *the highest instruction which the age is in a condition to communicate to its children?* Do you make the most of the present, or do justice to the future, by disseminating, even if such were possible, to the whole community, an amount of insight short of that which belongs not only to the learned, but which, by adequate institutions for the purpose, may be made the common property of all whose necessities do not withdraw them from mental pursuits? Whatever may be our activity in directly checking vice, or preventing degradation, do we not, so long as we fail to communicate, to the greatest number who can receive it, the greatest amount of the highest instruction, lose the most powerful means which we possess of acting on the guiding spirits of society, of whose views its laws and institutions ought to be, and are in a great measure, the expression? Nay more, when we turn from the political to the social side of the question, do we not, by lowering the whole tone of society, both intellectual and moral, cut off, even from the humbler classes, whose friends we profess to be, the source from which the benefits, which at present they are enjoying, flowed originally? To our mind nothing can be clearer, than that on the completeness of the higher instruction, and consequently of the institutions by which it is communicated, our general civilisation, of which popular improvement is only one of many consequences, is dependent, not only for its progress but its permanence.

But again, the popular thought of one age is dependent on the scientific thinking of the age which preceded it—the lower is nourished by the higher instruction. In each individual generation it is to those who have received the *complete* training of their time, that those who have received it *partially* owe the accuracy and precision of their knowledge, so far as it goes. Were it not that the information communicated to the people is

continually referable to its source, and is exposed to the constant criticism of the class of persons from whose labours it was derived, it is manifest that in these respects it would degenerate in every hand through which it passed. That the fullest man is not always the readiest and clearest instructor, is so true as to be a truism; but it is not less true, though apparently not so well remembered in our day, that unless the full man were alternately behind the scenes as a coadjutor, and before them as a censor, the audience in all likelihood would receive from the ready man only a superficial and slovenly account of the subject-matter of discourse. Nor can it be doubted, that where the more ordinary gifts of clear statement, and ready and apt illustration, chance to fall together, as they often do, with depth and originality, a far greater impetus, and a much more serious character will be communicated to the thinking of an audience than can be given to it by an inferior man, however dexterous. A speaker of this character, along with the knowledge which he communicates, will impart something of his own mode of viewing it, and the better part of his audience will be participators, not only in the results of his thinking and of his learning, but of the habits of mind and methods of working by which these results were reached. Nor is it only from the professor's chair or the pulpit, from the platform, the bench, the bar, the senate, or through the press, that such instruction may be communicated. Though the person whom we have supposed should be denied each and all of these public channels, if you prepare him thoroughly, launch him into the community, and support him in it, he must and will do it this inestimable service. Even if his instructions should be confined to conversation, and should not pass beyond the circle of his family and his friends, it is impossible to estimate too highly the services which he may thus render in training others for wider spheres of activity. We believe there never was a learned and thoughtful man, who did not create around him, and leave after him, his school of disciples.

But farther, we must remember that however we may estimate the advantages or disadvantages of the higher instruction, our having it and its representatives, in some shape, is not an optional matter. Wherever active minds are born into the world there must be those who acquire and communicate, who think and teach, beyond the mere rudiments of knowledge.

"Gladly wolde he lerne, and gladly teche,"

is a characteristic happily not peculiar to the "Clerke of Oxenforde," either of the fourteenth or the nineteenth century. Speculation is inseparable from intelligent existence, involuntary in the individual, irrepressible in the community. "Man philosophizes as he lives; he may philosophize much or little, well or ill, but philosophize he must." When we keep this fact in view, we have no difficulty in seeing that it is an error to suppose that the only impracticable schemers are those who propose to themselves an aim too high for humanity. We may reach the impossible by descending as well as by ascending; by taking too humble as well as too lofty a view of our common nature. Those who tell us that they wish all men could be persuaded simply to read their Bibles and attend to their business, utter a wish (even if it were wise) as chimerical as ever proceeded from the wildest believer in human perfectibility. The only choice that is left to man is between "philosophizing well" and "philosophizing ill," and all that that public sense, which rules the destinies of free states, can do, is to make its election between encountering the consequences of the one, or reaping the fruits of the other. But where the bane is inevitable, can there be hesitation in the mind of any reasonable man, or community of men, in seeking the antidote? If you cannot have the lower instruction, in the sense of an acquaintance merely with the indispensable elements of knowledge, but, wherever you come upon a mind more active than the rest, *must* have an attempt at applying this knowledge to speculative purposes, can you innocently or safely leave this speculation to wander into regions where error springs up by the wayside, but where truth, if gained at all, must be gained at the expense of long and patient and skilled husbandry. In this view the necessity of a Learned Class, for the mere *safety* of the community, comes out almost as clearly as that of a police or a magistracy. They are the great moral "detectives," and unless provision is made by society for their vigilance, it is very possible that those whose boast it is that they "mind their own matters," may not be permitted for ever to do so in security. Let us remember what the consequences were of Rousseau and his followers being left to labour, with no monitors more adequate to the task of superintending them, than the obsolete and dogmatic priesthood

of last century! If France had possessed a class of active men of letters, dealing with subjects of modern interest, ready to apply the tests of history to every crude political rhapsody, to subject every pretending theory to the *experimentum crucis* of an unsparing criticism, who can say that the Revolution would have taken the shape which it assumed? There was knowledge enough in the world to meet the emergency, if it could have been brought to bear upon it, for we are greatly mistaken if a single erroneous political doctrine was propounded by these writers which Aristotle had not already anticipated and refuted.*

SECT. 4. *Of the Religious Bearings of the Higher Instruction.*

But if the present and the future do not greatly differ from the past, the purity of our religious faith and practice is not less intimately bound up with the higher instruction, than the rectitude of our political opinions, and the stability and progress of our institutions. In former times, the necessity of this connexion was never doubted. When the sacred functions, which the first-born of all Israel had performed, were transferred to the tribe of Levi, to them also was entrusted the care of the secular-spiritual interests of the people. The priests of Egypt, from the earliest times to the latest, were the representatives of secular learning. It was to them that Solon, Pythagoras, Herodotus, Plato, were debtors in early times; and in a later age Manetho, the historian, is said to have been high-priest at Heliopolis, and certainly belonged to the order of the priesthood. The Persian, Assyrian, and Babylonian Magi, the Hindoo Brahmins, the Buddhist Lamas, the Chinese Bonzes and Confuciants, regarded the cultivation of the learning of their respective countries as inseparable from their sacred functions. The companions of Odin were the Levites of the Scandinavians, and the twelve pontiffs who were chosen from among them, were the interpreters of the law, and the masters of the lay. The Druids preserved to the unprogressive Celts the little that they had reclaimed from the realms of the unseen. In the classical nations of antiquity, the connexion between secular and sacred learning was less than was ever elsewhere known, and there also the influence of the latter was at its minimum. In cultivated Greece, indeed, the philoso-

* *Vide* Coleridge's Statesman's Manual, p. 217.

phers were the true priesthood of the nation; and we may say of the secular, that it absorbed the religious element, rather than that it was separated from it. When in the Middle Ages the clergy assumed the guidance of the entire spiritual interests of the people, the assumption was acquiesced in, rather as a declaration of a connexion which mankind instinctively recognised, than as the proclamation of a new relation; and when, in the end, Protestantism established the right of private judgment and the law of individual responsibility, in matters sacred as well as civil, the union was recognised, not in a tribe or an order, but in every individual member of Christ's body. "Ye are all priests," far from removing from the priesthood the responsibility of developing, in a secular sense, the highest nature of man, imposed it as a part of his religious duties on every responsible being. The privileges, and the corresponding responsibilities of the sacerdotal tribe, were, by the abolition of the Mosaic arrangements, extended, by Christ himself, to the universal Church. We are thus all Levites at our peril. The religion which we profess is not an exceptional law, a *jus singulare*, a rule for Sundays more than for Saturdays, for sickness more than for health, for our preparation for another world more than for our guidance in this. It is the constant rule of our secular as well as of our religious life, for the two indeed are one.

But when the priesthood was in a tribe, that tribe enjoyed, both amongst the Jews, and in the heathen nations which we have mentioned, such a portion of the fruits of the soil as was requisite for their support, not only as the ministers of religion, but also as the secular teachers of the people.* The sacerdotal *family* had but a "tenth of the tithe"† which the children of Israel paid to the sacerdotal *tribe*. Now, if the duties of the Levites, secular and sacred, instead of being abolished by Christianity, have only been transferred to the whole community of the faithful, is it not obvious that, since from their very nature these duties must be the task of individuals, the obligation of making provision for their performance by the support of these individuals, has been transferred along with them? If the community is bound to perform them, it is bound to employ the means that are necessary for their performance. If, even on his

* *Vide* Coleridge on the "Nationality," Church and State, *passim*.

† Numbers xviii. 26.

own chosen people, in whose affairs God so often interfered by special providences, he imposed the duty of supporting, by the surrender of a tithe of their earnings, the class whose concern was with their immaterial interests, can we suppose that it will be different in a condition of affairs in which direct interpositions have ceased, and in which ends are more constantly and manifestly the results of human means.

SECT. 5. *The Higher Instruction cannot be Self-supporting.*

But even when we are agreed as to the necessity of secular pastors, and are willing to admit that somehow they must participate in the national wealth, the question remains as to the manner in which it must be given and secured to them. This brings us nearer to the practical part of our present subject.

By many persons who admit the inevitable connexion between the higher instruction and the progress of civilisation, it is contended that society has already so changed its character, as to render it unnecessary that provision should be made for a learned class by direct endowment. If we can carry the lower instruction far enough, and make it sufficiently general, it will bear up the higher instruction and support its ministers by means of its own inherent strength. The principles of free-trade, they tell us, are applicable here as elsewhere, and if we create the market, we need not fear that the commodity will be wanting.* To this view we answer, *that it is of the essence of*

* The view that the State can legitimately present to itself only negative objects, which was prevalent in the end of last century, and of which the most scientific statement with which we are acquainted is contained in an early work by Wilhelm von Humboldt, published since his death, (Ideen zu einem Versuch die grenzen der Werksamkeit des Staats zu bestimmen,) seems now to be abandoned, even by the most liberal school of politicians. Lieber, in his Political Ethics, has the following remarks on our present subject:—"If society be convinced that institutions of deep learning, universities, are of absorbing importance to society, because science must always be far in advance of practice, and because the cultivation of the sciences for their own sake, and not with a confined view of immediate practical application, raises the standard of knowledge in general, and is a great blessing to the community; and if the State be convinced that private means must ever be insufficient for the erection of an university and the collection of large libraries, museums, &c.; or if experience have shewn that private exertion will not be directed to the foundation of an university, then the State has precisely the same right, *and the same obligation*, to found an university, as it has to aid in the foundation of common schools, or hospitals, courts, pilots, or armies."—P. 185.

In stating the answers which are made by the states-educational to the voluntary-

*the higher instruction to be unpopular to the extent of being an unmarketable commodity;* and this opinion we found on a consideration of the relation which it holds, and must continue to hold, to the general intelligence of the community. Whilst man is a progressive and imperfect being there must be an unattained goal in knowledge, as in virtue, and whilst men are unequal there must be those who have advanced on the onward march farther than others. However high you raise the general instruction and thinking of a people, therefore, you must still have a higher instruction, which, though absolutely differing from what we now call by the name, will hold to the general intelligence of the age to which it belongs the same relative position which the higher does to the lower instruction at present. The distance between the two may, without injury to society, be diminished for a time by the more successful cultivation of the lower instruction; but it can disappear, if at all, only by a cessation of progress on the part of the higher instruction which would speedily check the march of social development. Now that the lower instruction, and the general intelligence which it generates, do not at present sympathize with and call for the higher instruction, *to the extent of supporting it indirectly*, will, we imagine, be admitted; and if we are right in asserting that the cause of this effect is likely to be permanent, can we hope that the effect will pass away? Can we, for example, look for a condition of general intelligence, in which the public will buy books, or hear lectures, or otherwise avail itself of a teaching, in which the highest thinking of the time is embodied, to the extent of remunerating, or even in any way, however humble, of supporting those of whose labour it is the result? Nor is it the want of that amount of interest which is extended to popular

educational party, (Educational Report, p. 79,) Mr. Horace Mann omits the one which seems to cut deepest both against voluntary-educationalists and against non-interventionalists generally, viz., that their arguments assume that the state is something distinct from the popular will,—which is not true of free states, and scarcely perhaps even of despotic ones. Where the state and the people are one, it is obvious that there is no essential distinction, in principle, between what is done by the state, and what is done by a smaller body of persons, whether in their secular or their religious capacity. The act of the whole is as much a voluntary act as the act of a portion, and the question, whether we ought to take up the education of the people as a community, or as sections of a community, is a question of simple expediency, which will receive different answers at different times, and as regards the different departments of education.

teaching alone which prevents the higher instruction from being self-supporting. Take the case of books;—and even suppose, (what every bookseller can tell is far from being the case,) that those which possess a strictly scientific or profoundly speculative character could be sold as readily as popular treatises or the still lighter literary productions, can they be produced with the same facility or in the same quantity? One single volume of no great dimensions, and which, if it is to be sold at all, must be sold at a moderate price, is probably the result of a life, or of several lives, devoted to the subject of which it treats. Even after its publication, whatever fame it may acquire for its author, it will bring him the means of living to no greater extent than any other successful volume of equal size, and up to that period to what have he and his fellow-labourers trusted? In the most favourable circumstances they have been exercising uncongenial professions, which stood continually in the way of the discharge of their natural duties to society; or they have been holding public situations, which, to the public loss, they found it necessary to convert into sinecures. Such are the fortunate exceptional cases in which perseverance in learned pursuits has been accidentally rendered possible; the rule is, that such men, after an unavailing struggle to serve two masters, abandon the one whom, if he had had the means of retaining them, they would have served with zeal; and the public, in place of the lay-pastors of whom they stood in urgent need, have a very unnecessary and not very efficient accession to the already over-crowded ranks of the professions.

But even this is not the worst of possible evils. So long as such men are abundantly produced, they will contrive to give such a tone to the existing professions, and to the public service, as will enable them to draw a scanty tithe from their connexion with them, and the public will still have the benefit of their services, *though probably at a greater cost than would have been required for their direct support.* The state of matters which we have most to apprehend is that in which, wearied with the discouragements incident to their condition as irregular professional practitioners, they threaten to disappear from the community altogether. It is against this occurrence that we must guard, as we should against an influx of barbarism itself, and it is when its approach becomes imminent, that direct en-

dowments for a learned class, which before would have been wise, become indispensable.

SECT. 6. *The Higher Instruction cannot be Supported by the Professions.*

It is extremely difficult to assign a cause for the existence of that spirit of immediate utilitarianism which has brought the higher forms of professional accomplishment into disfavour in our day. Perhaps it is to be attributed to the fact that the professions, like the Universities themselves, have passed from the patronage of the few to the patronage of the many; and that the many are scarcely yet enlightened enough to perform to them the offices which the few are no longer in a condition to render. Even in former times, it is true, those who exercised a profession were not dependent on monarchical or oligarchical patronage to the extent to which the professors of learning, both sacred and secular, were; but still, in accordance with the whole genius of society, the law by which they were ranked came *de haut en bas*, and though far less liberal, and far less impartial, this law was probably a more discriminating one than that which is furnished by popular favour alone. The multiplication of affairs, incident to a growing external prosperity, has also unquestionably had the effect of rendering men less fastidious about the means by which each individual affair is despatched. They have no longer time or patience for the luxury of a learned treatment of their interests; and a learned lawyer or statesman, instead of being eagerly sought after, is shunned as an impediment to public business. But whatever the cause may be, the fact, we have good reason to think, is beyond dispute, and the manner in which it is at present making itself felt in the highest department of the legal profession, both in this country and in England, as well as in America, is so fully exhibited in the Report of the Faculty of Advocates "on the Qualifications of Entrants," which we print in our Appendix, that for the present we must be contented to make a reference serve instead of a demonstration. We are far, however, from regarding this tendency, unfavourable as we think it to present progress, as a sign of social retrogression. On the contrary, we believe that in every state in which society is highly organized, and which enjoys great external prosperity, reference to general

principles for rules of immediate action, on the part of those who are actually engaged in the despatch of business, must, from the delay which it necessarily occasions, come to be regarded as a worse evil than action which is at variance with principle altogether. In such circumstances, however, we are convinced that our safety does not consist in clinging, without farther investigation to principles which have been established in more leisurely times. If our action in the senate and on the judgment-seat is to be in accordance with the requirements of our existing society, it must be founded not on principles which we have inherited, but on such as, *by the constant labours of a living portion of our living community*, are evolved for our present guidance. It is thus alone that the "occasion sudden" can be encountered with a rational confidence; that the experience of the past can be made truly available to the present; and that the spirit of innovation, which, without such guidance, the judicious tremble to see at work, will serve effectually to strengthen the hands of those who are entitled to be original. If we cannot afford to allow our men of action to retire into the closet, as their ancestors did, to question the rules of their own conduct, we must not neglect to supply others* for the duty which we refuse to them the opportunity of performing. We must submit to this additional division of labour, as a new consequence of a civilisation which, if it is to be progressive, must become daily more complicated in its arrangements, and we must supply to society a class of persons who can charge themselves directly with duties which can no longer be combined with other occupations. Scotland has furnished perhaps the most memorable instance known to history of the benefits which, even as regards their external prosperity, one single theoretical labourer may bestow on whole generations of practical men. It is to an old Glasgow Professor of Logic, whose own business transactions, for purposes of experiment, must have been pretty much on a par with those of Diogenes, that Europe is indebted for that science, the direct

* If you will have sciences flourish, you must observe David's military law, which was, "That those who staid with the carriage should have equal part with those which were in the action," else will the carriages be ill attended. So readers in sciences are the guardians of the stores and provisions of sciences, wherever men in active causes are furnished, and therefore right to have equal entertainment with them.—*Bacon, Advancement of Learning*, vol. ii. p. 94, ed. Montagu.

object of which was the supply of our physical wants, and for those principles of trade, by the practical application of which, in our own day, second-rate economists have gained reputations scarcely inferior to that of their great discoverer. If Adam Smith had been a merchant or a banker, it is scarcely probable that even he would have been able to view economics sufficiently in the abstract to enable him to raise them to the dignity of a science.

In admitting, however, the necessity, and recognising the benefits of a separate cultivation of theory and practice in advanced societies, we must guard ourselves against the imputation of supposing that they can possibly exist independently of each other, or that their mutual dependence can be diminished without injury to both. On the contrary, it is precisely for the purpose of preserving their connexion, and preventing practice from being guided either by antiquated dogmas or by narrow empiricism, that we have dwelt on the necessity of a non-practical or rather a non-practising class. The function of these individuals will not be, by laying down lifeless rules for his guidance, to relieve the practitioner from the necessity of being acquainted with the living and generative principles of his art, but, on the contrary, to bring these principles home to his consciousness, to keep them constantly before his mind, and thus, in the midst of his pressing affairs, to enable him to act in novel circumstances with the security which the complete possession of principle alone can give him.

SECT. 7. *Results of the preceding Discussion.*

The observations which we have hitherto made, from the inter-dependence of all the branches of our subject, have necessarily assumed something of an unsystematic character; but, if we have succeeded in carrying the convictions of our readers along with us, we are now in a condition to derive from them the following conclusions:—

1*st*, That the highest instruction is indispensable to the political, social, and religious wellbeing of the community.

2*d*, That in no community, however enlightened, can the higher instruction, or the class which represents it, be self-supporting. And,

3*d*, That the tendencies of the present time in this country

are unfavourable to their indirect support, in connexion with the professions, or the public service.

It is properly as a consequence of these conclusions which, whilst they pronounce the higher instruction to be indispensable, cut it off from all other means of support, that a demonstration of the inadequacy of the direct provision which is made for it in Scotland assumes its true importance; and though we have no present intention either of writing an historical dissertation or of deluging our readers with statistics, we must take the liberty of reminding them of a few of the facts which, from time to time, have been brought forward in proof of the defective condition of our Universities, and of adding to them such as occur to us on the present occasion.

## CHAPTER II.

### THE PAST AND THE PRESENT.

SECT. 1. *The Higher Instruction in Scotland in the Sixteenth Century.*

In the year 1582 the University of Edinburgh was founded by a charter of our King James the Sixth; and it is a fact which our readers are possibly not much in the habit of contemplating, that this is the latest important institution of our country which has reference to the higher secular-spiritual wants of the people. If we add, that it is our belief that the provision then made for these wants far exceeded that of which, considering the increase of our population and our resources, we can now boast, we shall probably not only stand in need of no apology for pausing to establish our assertion, but may be called upon to do so by incredulous shouts.

Such, however, is the opinion which we have been compelled to form; and our readers may rest assured that it is the result of none of those peculiar leanings which in the present day seem to chain the imaginations of some to the middle age. We have no inordinate admiration for the past, and, we trust, no gloomy ingratitude for the many blessings of the present; but we can regard it as no part of a wise optimism to misrepresent the one, or to misconstrue the other.

How, then, stood the educational, the civilizing and spiritualizing institutions of Scotland in and about the year 1582? In that year, as we have said, the Metropolitan University was founded; and though it struggled through a feeble youth, we find it in 1625 possessed of a Principal, four regents of philosophie, a regent of humanitie, a hebdomadar, and other officers. All the more important branches included in what is now called

the Faculty of Arts were then represented and taught. The other three Universities, it is well known, were legacies from Roman Catholic times; and those of our readers who doubt that they were equipped and manned in the sixteenth century at least as efficiently as at present, will have their scruples removed by referring to no more recondite source than the Report of the Royal Commissioners in 1830.* The National Church, in its Presbyterian form, but with a provision for ecclesiastical dignitaries which we have since lost, had already existed for twenty years; and the wise influence of Knox had established the parochial schools. The High School of Edinburgh was the elder sister of the University, and was completed in 1578. Most of our burgh-schools are of much earlier date. In the reign of David the First, the care of the schools of Roxburgh was entrusted to the monks of Kelso, and that they must have been of some importance we gather from the fact, that, in 1241, the "rector of the schools" was an established officer. Still earlier, in 1173, we read of the Schools of Perth, Stirling, Ayr, St. Andrews, Aberdeen, and, a little later, of those of Linlithgow, Dundee, Haddington, &c. In a Statute of James IV., (1494,) to which we shall have occasion again to refer, it is taken for granted that grammar schools were common over the country, no special places of instruction being pointed out to the sons of barons and freeholders, who are there enjoined to attend them. All schools previous to the Reformation, as a matter of course, were under the superintendence of the clergy; and the prudent regulation seems to have prevailed of appointing an individual monk to be director of the schools of a whole burgh, or even district, thus avoiding the risk of neglect which must have arisen so long as the responsibility was shared by a whole fraternity. We have mentioned the existence of the office at Roxburgh. At Perth and Stirling we also find it,—attached to the Monastery of Dunfermline. At St. Andrews a rector of the schools is mentioned in 1233. At Ayr there was a Magister Scholarum in 1234, and in 1256 the statutes of the Church of Aberdeen directed that it should be the duty of the Chancellor of the Chapter to attend to the regimen of the schools, and to see that

* See also Origines Parochiales Scotiæ. Bannatyne Club, vol. i. In the Bull of Pope Nicholas V., by which the University of Glasgow was instituted, are mentioned Regents, Doctors, Masters, Lecturers, Scholars, and Students.

the boys were taught grammar and logic. In so far as the education of the clergy in such branches as then constituted the learning of Europe, was concerned, it is probable that many of these schools were by no means in an inefficient state; though it is possible, as has been generally asserted, that in earlier times they had little influence on the lay community. But that the statute of James fell into instant desuetude, as has been asserted, seems a conclusion by no means warranted by such facts as we possess. In the course of the succeeding half century the attendance on some of the schools was so large as to astonish us in modern times. Andrew Simpson,* who, from 1550 to 1560, was Rector of the Grammar School of Perth, had sometimes three hundred boys under his charge at once, including, we are told, many of the sons of the principal nobility and gentry. Of this fact we find a confirmation in the circumstance that John Row, who at one time held the office of Papal Nuncio, after his conversion to the Reformed doctrines taught Greek and Hebrew at Perth. Many children of noblemen and gentlemen were boarded in his house, where French was always spoken, Latin being the language of the school.

Nor were those who then conducted these grammar schools persons to whom the absurd and pitiful character which has latterly attached to the Scottish "dominie," could possibly have belonged. At the very time when Simpson was Rector at Perth, Dr. Ninian Winzet, the opponent of Knox, and whose reputation as a scholar was such as latterly to procure for him from the Pope the office of Abbot of St. James's at Ratisbon, held the same situation at Linlithgow, where he spent, as he tells us, the "maist flurissand part of his aige." Winzet, it is true, complains bitterly in one of his works that "so litle respect hes evir bene had to the grammar sculis, quhairin comonlie the maist happy and first sedis of the commouwelth are sawin." Of the high idea which he had of the dignity of his office, however, we gain some insight from another passage, where he tells us, that "I jugeit the teching of the zouthed in vertue and science, nixt efter ye auctoritie with the ministeris of justice, under it, and efter the angilicall office of godlie pastours, to obtene the third principal place maist commodious and necessare to the Kirk of

* Simpson was the author of a Latin Grammar which kept its place in Scotch schools till the days of Ruddiman.

God."* Again and again Winzet recurs to the time spent in his "kyndly toun," and evidently by no means with the feeling that an indignity had been inflicted upon him by the office which he had filled. A few years later Thomas Cargill, whose scholarship is mentioned with the highest praise by the celebrated Dempster, who had been one of his pupils, was Rector of the Grammar School of Aberdeen; and those who are acquainted with pædagogic biography could in all likelihood furnish us with a host of names even more worthy of note. The office of a classical teacher, indeed, seems to have been one of those which were sought by our countrymen abroad. About the very time of which we write, Florence Wilson, a distinguished scholar, and the friend, as it would seem, of most of the highest scholars of his time, was the master of Carpentras School in France.

But a yet higher class of schools existed in Scotland previous to the Reformation—those taught by the Monks within the walls of their monasteries. It was in these that such of the youth as were intended for the higher offices of the Church, or were ambitious of becoming scholars by profession, were prepared for the foreign universities. To them, also, were committed the children of such of the nobility as wished to procure them a more refined instruction than in those rude times was usually considered necessary for a feudal chief. Of this an instance is mentioned in the Cartulary of Kelso, where, in the year 1260, a certain noblewoman grants a rent to the abbot and monks, under condition that they should board and educate her son "with the best boys intrusted to their care." It is not improbable that the expression, "Schules of Art and Jure," which occurs in the statute of which we have spoken, may have reference to these monastic schools, as well as to the College of St. Salvator's at St. Andrews, and the University of Glasgow, the only universities which then existed. Many of the highest ecclesiastics in those days were decorated with legal titles; and a degree of "Doctor decretorum," "Licenciatus in legibus," or

* Winzet, it will be perceived, writes Scotch. His reproach of Knox for his partiality for the dialect of the South is curious. He attributes it to his love for innovation, and seems to regard it as part and parcel of his other offences: "Gif ze, throw curiositie of nouationis, hes forget our auld plane Scottis, quhilk zour mother lerit zou, in tymes cuming I sall wryte to you my mynd in Latin; for I am nocht acquyntit with zour Southeroun."

"Baccalaureus in decretis," was as great a recommendation for Church as for State preferment; and such being the case, it is highly probable that in some of the wealthier monasteries schools existed in which the youthful aspirants for these honours received such a measure of instruction as to enable them, immediately on their arrival, to avail themselves of the foreign universities.

At the period of the Reformation the burgh schools passed into other hands. Dr. Ninian Winzet, and the class of men to which he belonged, were justly regarded with jealousy by the Reformers; and when converts became more numerous, these latter found little difficulty in supplying their places from their own ranks. For the monastic schools, however, no substitutes arose; and we fear there is but too much reason to think, that the function which they performed, in placing a portion of our countrymen at all events on a level with the rest of Europe in the matter of scholarship, is one which has never since been discharged by any class of schools in Scotland.

But we have not yet completed our enumeration of the educational institutions of the sixteenth century. Previous to the establishment of Universities in Scotland, a residence abroad was considered indispensable for all who aimed at advancing their fortunes by other means than the sword; and even after these institutions arose, the custom continued for more than a century in green observance. At a much later period, and indeed down to the middle of the eighteenth century, we meet with few eminent Scotchmen who were not partially educated on the Continent; and it is probable that the generation now at maturity had less intercourse with foreign countries in their youth than any other within the range of our authentic history.* During the last thirty years the custom has in some degree revived; and it is productive of so many advantages, both intellectual and social, that we would gladly see it more generally reinstated. So long as even a highly instructed man has not actually seen political relations, social life, civilisation, and refinement, under more than one form, however much he may have heard of the manner in which they exist, some degree of narrowness will invariably belong to his character. By such a person the accidental peculiarities of that phase which society exhibits

* See Appendix A.

in his own country, will be continually mistaken for the necessary consequences of a normal human development; and with Chinese exclusiveness he will become as intolerant of a custom which sins against his conventional notions, as of one which violates a universal law. It is by no means sufficient that the distinction, when pointed out, should be admitted; the practical conduct of the individual will be the same so long as he does not *feel* that whilst the one is as universal as the heaven which is over all, the other may be set at nought, not only innocently, but frequently with advantage. Now this *feeling*, so far as we have observed, is to be found only in those who have, so to speak, absorbed more than one nationality; that is, to whom the manners and modes of thinking of some foreign people have at one time been so familiar, that those of their own country would have been felt to be strange. At first sight it may appear that that rigidity in trifles, by which it will be admitted our countrymen frequently expose themselves to ridicule, is too insignificant a fault to merit so costly a cure as a foreign education, but it should not be forgotten that in magnifying trifles to the level of moral and religious duties, we run no small risk of occasionally degrading these latter to the level of trifles, or what is still more frequent in this country, the half interest with which we regard, and the half strictness with which we perform the one extends to the other, and a sort of unmeaning and undiscriminating stiffness, which speedily becomes the grave of everything like generous enthusiasm or fearless sincerity, extends itself to our whole conduct. Now the advantages thus arising from foreign residence and instruction, it was the object of our ancestors to secure to our youth by positive institutions; and with this view it was that Balliol College, Oxford, and the Scotch College in the University of Paris, were founded, the first by Dervorgille, the wife of the elder Balliol, in 1282, and the latter by David, Bishop of Moray, in 1325. Similar institutions of less celebrity existed in other parts of the Continent, all of which have either been swept away by successive revolutions, or converted into training schools for the exclusive use of the Roman Catholic priesthood. Those who know how rarely the advantages we have hinted at, to say nothing of the more special ones of positive scientific instruction, fall to the lot of those innumerable swarms of our youthful countrymen who at present infest

every part of the Continent, will be able to appreciate the wisdom of an arrangement by which provision was made for the superintendence of their studies immediately on their arrival. Nor was it only where such establishments had been instituted for their benefit that Scotch students in earlier times had an advantage over those of our own day. To say nothing of the facilities afforded for foreign study by the use of Latin as the common language of the learned, there was scarcely a university on the Continent where Scotchmen did not hold professors' chairs during the sixteenth century. In turning over the leaves of Dr. Irving's "Lives of Scottish Writers," we have ourselves hit upon no less than thirty-three names of countrymen of our own, who during this time were professors in the Universities of France, Germany, and Holland. It was into the hands, and not unfrequently into the houses, of these men, that a Scottish youth of those days naturally passed, when he had completed his course at the burgh or monastic school, and from their position they must have been eminently qualified not only to give him every information and assistance with reference to the course of study pursued at the Foreign School, but from being his countrymen, and consequently acquainted with the course of his previous training, they would be enabled to adapt their advice to the condition of his actual advancement.

Now-a-days the condition of such a youth is very different; and we know few things more bewildering than the *embarras de richesse* into which a newly arrived student at a foreign university is plunged. Lecturers on every possible subject, many of them probably of European celebrity, offer him the benefit of their instructions; but in what order he ought to hear them, whether their usefulness to him is likely to be at all in proportion to their fame, and to what extent his previous acquaintance with any particular subject may qualify him for following the lectures of particular professors, are all of them questions of the utmost importance to him, which he cannot solve himself, and which no one else can even assist him in solving. He has no examination to pass,—the *comitas gentium* regarding the simple production of his passport as a sufficient guarantee for his fitness,—so that the whole feast is presented to him at once, and he is left to find out, as he best may, the order of the courses, which still he cannot neglect with impunity.

There is scarcely a page in the history of our country which an intelligent Scotchman may read with juster pride than that which tells the story of the band of literary adventurers whom it sent forth during the times of which we speak. They probably corresponded, in their day, to that large class of persons who now hold the public appointments of the country in the colonies, whereof it is alleged that Scotchmen have at least their share. But it cannot be denied that the positions which they occupied were at once more dignified in themselves, and were won by means far more manly than those by which colonial appointments are usually obtained. For an inhabitant of this small, poor, northerly, and, as it is thought to have been, ignorant land, to become, not a pupil, but a teacher, in the highest learned institutions in the most learned countries of Europe, was something of which both he and his fellow-countrymen had surely more reason to be proud, than of his being sent by a colonial secretary to measure out by a mongrel code a scanty justice to squalid savages. If we can imagine a meeting between a Scotch Professor of Pandects of Bologna, in the sixteenth century, and a Scotch Chief-justice of New Zealand of the present day, we can have little hesitation, if there were to be *Hochnasigkeit* on either side, in determining which would be entitled to look over his nose at the other. The one, in the open arena of Europe, had gained by his personal qualities alone, a position of which few European men of that day were not ambitious; the other holds, by pure favour, a place which no civilized man would take, if it were not for the pecuniary emoluments which attach to it. The pride of the one man was in the strength of his brains, that of the other is in the fulness of his pockets; may we not add that the grounds of their respective gratulations are but too truly the indices of the conditions of society to which they respectively appertain?

Previous to the wars which followed on the death of Alexander III., the relation of this country with England was of a much more intimate kind than during any succeeding period, down to the final union of the crowns. The kings of Scotland held lands in England, with reference to the feudal homage for which the fatal mystification afterwards arose. The same was the case with the principal nobility; and to this fact is ascribed the small amount of patriotism which they exhibited in the beginning of

the war. In these early days it was not unusual for the Scottish clergy to complete their education at Oxford. Michael Scott, Sacrobosco, Duns, Suisset, &c., are all of them represented as having studied at Oxford. We have mentioned the foundation of Balliol College towards the close of this period. We do not know to what extent it was frequented by Scotchmen during the war, but it is probable that churchmen, whose common tie to Rome must have acted as a bond of union even amidst national dissensions, still resorted thither. At Cambridge there was no similar institution, but nevertheless it was sought by our countrymen. In 1270, we are told the students there were divided into nations; and five English, *three Scotch*, three Irish, and two Welsh collegians, were invested with a kind of rectorial power, for the purpose of maintaining order among their countrymen. If the number of Collegians was in proportion to the number of students from their respective countries, the attendance from Scotland must, for the size of the country, have been very large; but such can scarcely have been the case. It is true, that during the whole course of our history we occasionally meet with persons who studied at Cambridge. John Mair, the celebrated Doctor of the Sorbonne, and the author of six books, "De Gestis Scotorum," is said to have studied there, as well as at Oxford and Paris. And the same, at a much later period, was the case with the strange and romantic Dempster, who, after having held Chairs in no less than *eight* Universities, terminated his career as Professor of Humanity at Bologna. Nor ought it to be forgotten by those who charge our countrymen with incurable inaptitude for exact scholarship, that Dr. Thomas Young, who was Master of Jesus College, Cambridge, and the private tutor of Milton, was a Scotchman! Many other names might, no doubt, be mentioned, but we meet with no data to warrant us in the conclusion that Cambridge ever was a very frequent resort of our countrymen.

SECT. 2. *The Material Resources of Scotland.*

Such, then, is a brief retrospect of the educational institutions of Scotland, and of the results which they produced, at and previous to the year in which our Metropolitan University was founded. The subject is so interesting, it is fraught with so many pleasing and proud recollections, that we could willingly

have dwelt upon it more in detail. But our business is not with the past. We have conceived it our duty to present to our readers the more youthful lineaments of our intellectual life, as these were exhibited 250 or 300 years ago; but we have been prompted to the task by no desire either to disgust them with the present, or to discourage them for the future. Our object has been simply to prompt the question,—if such institutions were established, and such men were produced in the very dawn of our material prosperity and our intellectual life, what, with a good and resolute will, might not now be effected? The resources of our country have enormously increased. Within the last half century our population has almost doubled; and though we have no data on which to form an accurate estimate, we may safely assume that it has quadrupled since the middle of the sixteenth century. Our wealth has increased even more astonishingly. In Cromwell's time we are told the whole shipping of Scotland consisted of 93 vessels, carrying 2724 tons, and 18 barks.* On the 31st December 1852, there were belonging to Scottish ports 3450 vessels, carrying 534,908 tons, the number of vessels thus greatly exceeding that of the tons which they carried at the former period. But if our readers are sceptical as to Cromwell's estimate, or disposed to regard the poverty of that time as an accidental result of the troubles, we may refer them to the returns in the circular letters which were issued by the Commissioners of Customs in January 1702. From these it appears that there then belonged to all the ports of England and Wales 3281 vessels, being 169 under the number belonging to Scotland alone in 1852, as stated above.* If the Scotland of 1852 thus exceeds the England and Wales of 1702, we may imagine how she would contrast with her former self in the sixteenth century. We have adopted the shipping as an index of the extent at once of our imports and exports, and consequently, also, of our manufacturing industry. We might easily multiply facts from other

* Mr. Burton, in his recent History of Scotland, vol. ii. p. 393, says, that in 1735, the "tonnage of Scotland is believed not to have exceeded 12,342, while that of England was estimated at 476,941. In 1851, the tonnage of Scotland was 536,266, while that of England was 2,803,052. The proportion of increase is its most marvellous feature. If the earlier numbers can be depended on, in 1735 the Scottish shipping slightly exceeded a fortieth of the English; in 1851 it had become nearly a fifth." It will scarcely be asserted that our learned institutions have maintained a similar ratio to those of our neighbours!

quarters to the same purpose. When the Bank of Scotland was established in 1695 the *nominal* stock was £100,000, but £30,000 was found to be a capital quite sufficient for transacting the banking business of Scotland at that epoch. In the following year an attempt was made by the directors to plant branches at Dundee, Aberdeen, Glasgow, and Montrose, but it was found that the profits of these subordinate banks were unequal to the charges, and the establishments were recalled. If we add to this, that at the period of the Union, the whole circulating coin of Scotland did not exceed £900,000, we shall scarcely be called upon for farther proof of the poverty of our country even at a much later period than that with which we are here concerned.

Our revenue, then, our circulating medium, our means of internal communication, the physical comfort of the middle and even of the industrious portion of the lower classes, in short, all the appliances and means of outward wellbeing have multiplied apace. We have shared in the colonial wealth of the richest empire in the world, and channels have been opened up to the enterprise of our countrymen, through which they have not failed to secure both importance and wealth. If we say, in round numbers, that Scotland is now four times as populous, and ten times as wealthy, as she was in the sixteenth century, we shall probably run no risk of contradiction at the hands of our arithmetical friends. But after the sketch with which we have prefaced this Chapter, will any unprejudiced person acquainted with the present condition of our learned institutions, maintain that a corresponding increase has taken place in our provision for the spiritual wants of our people! Our riches have increased in a greater ratio than even our population, and, consequently, the provision for the instruction of our people ought to have done more than simply keep pace with their numbers. The middle class in the sixteenth century was but beginning to emerge from the fetters in which feudality had bound it; now it is the most influential and by far the wealthiest in the country; it is the class to which a learned education is most possible, for which it is most desirable,—and still it is precisely for the better education of this class that no effort has been made in Scotland.

## CHAPTER III.

### SCOTLAND CONTRASTED WITH OTHER COUNTRIES.

Depressing as is the thought, that our provisions for the higher intellectual and moral life of our country have not kept pace with our own material prosperity, and that thus, by failing to struggle upward, we have been daily exposing ourselves to the risk of falling into a downward path, it is still more humiliating to reflect, that, as compared with other countries, in some of which material progress has been far less remarkable, we have already visibly lost ground.

SECT. 1.—*Germany.*

At the date of the foundation of the University of Edinburgh we should probably have stood comparison with most European countries pretty fairly, and even the north of Germany, which then, as now, was the centre of the most advanced speculation of the age, would not have had much to boast of as regarded positive institutions. Since, then, whilst we have scarcely been stationary, six universities have sprung up there, and there are nine which date subsequently to the Reformation. We subjoin, in a note, their names and the dates of their foundation.* In every one of these, as well as in the older universities not only of Germany and France, but even of Italy, there is a little army of Professors in every possible department, *publice, privatim, et privatissime docentes*, and, what is very important, *non docentes* also; for, though the immunity may not, as in the

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|---|---|---|---|
| * 1. Marburg, | 1527. | 6. Breslau, | 1702. |
| 2. Königsberg, | 1543. | 7. Göttingen, | 1737. |
| 3. Jena, | 1558. | 8. Berlin, | 1809. |
| 4. Kiel, | 1665. | * 9. Bonn, | 1818. |
| 5. Halle, | 1694. | | |

The two latter were established and endowed by Frederic William III., father of the present King of Prussia.

case of English Fellowships, Canonries, and the like, be openly recognised, and though the names of all the Professors are regularly published in the Programmes of lectures which are given out at the commencement of each Semestre, there are still many, and these often, as men of letters, the most eminent, who are not expected to teach more frequently than they find consistent with their other occupations. Though most persons are acquainted in a general way with the fact, that it is by means of a development of the professorial system that the learned class in Germany is kept up, as well as the higher teaching of the country carried on, we have reason to think that few are aware of the extent to which the former object is kept in view; and we shall, therefore, besides inviting our readers to inspect the forest of lectures and lecturers in the department of the law, which they will find in the Appendix,* and which may serve as a pretty fair specimen of the other faculties, simply mention that, whereas in Edinburgh we have 31 professors, the number in Berlin is about 150 or 152.† The average number of students is there under 2000, and as they do not attend a greater number of lectures than students in Edinburgh, or remain at the university for a longer time, it is obvious that so large a staff of professors cannot be required or intended for purposes of teaching alone. That no positive arrangement should be made as to who are to teach and who are not, or even as to the portion of his subject which each is to attack, we regard as no small proof of wisdom on the part of a people so fond of laying down rules as our neighbours. All such matters naturally will, and we know do there, arrange themselves much better and much more in accordance with the specialties of each individual case, than if they were provided for by legislative enactment. Where the Government provision is small, pecuniary motives will always be sufficient to induce almost every one to do his utmost to obtain pupils, and each for his own sake will select the portion of his subject in which he is strongest, or in which he is least forestalled by the prelections of a competent rival. Should he fail to follow out the

* *Vide* Appendix A.

† The precise number varies from year to year, because the *professores privatim docentes*, being candidates for extraordinary or ordinary professorships, are continually changing from one university to another; and their places are frequently not filled for some time after their departure.

occupation of a lecturer, or should he abandon it after having carried it on successfully, it can only be in order that he may devote himself more exclusively to the scientific cultivation of his subject, because, in no case that we know of, except in a few of the medical chairs, is a professor permitted to retain his position in the university whilst he practises a profession. In thus excluding him from any other occupation, the public have a sufficient guarantee for his belonging to the learned class in the strictest sense, and such being the case, his own interest furnishes the only farther assurance for his efficiency which can possibly be obtained.

But it may be said that Berlin is not a fair instance, seeing that it is the metropolitan university of a country vastly greater in extent and population than Scotland. Let us take, then, the smallest of the Prussian universities—Greifswalde—and we shall find that even there the number of professors (which is 34) exceeds that to be found in the largest of ours. The other universities are on a similar scale. Bonn has somewhere about 70 professors, Halle 60, Breslau 80, Königsberg 53; even quitting Prussia, in the smaller German States we find a corresponding state of matters. Tübingen in Wirtemberg has 62 professors, Leipsic has 97, Munich (which ranks very low among the German universities) 66, Göttingen 88, Heidelberg 62, Jena 60, Erlangen 47, Würzburg 39, Giessen 47, Marburg 50, Freiburg 39; every one of them thus surpassing in numbers the largest university in Scotland.

Nor are the ideas prevalent in this country as to the extreme poverty of these institutions altogether well founded. In Prussia, where, in the hands of a native, money goes at least one-third farther than it does in this country, we find that, apart altogether from their other sources of revenue, (which in the case of such small universities as Halle and Greifswalde, are stated at £4400 a year for the first, and £7528 for the second, exclusive of fees,) the Government grant amounts to the sum of £53,440, a sum exceeding by several thousands a year the whole revenues of the Scotch universities from all sources whatsoever. For Gymnasia and Progymnasia there is another grant of £127,648, making in all £181,088, which is devoted annually to the *higher* instruction in Prussia.

But sincerely as we admire the learned institutions of Ger-

many, and much as we love a people whose true vocation seems to be the search after abstract truth, it is impossible that the political results which their intellectual and moral life has brought forth during the last four years, should not, for the present at all events, prejudice us even against that side of their activity to which we ourselves are so deeply indebted; and as France in this respect is not in a better case, we shall turn our eyes at once in a direction where no such objection meets us.*

SECT. 2.—*England.*

In a little work before us,† there is a table from which, as it seems to correspond with the more recent information of the University Commissioners, we extract the following facts:—In Oxford there are 593 professorships, lectureships, and fellowships; in Cambridge 482; in Durham 34; and in London there are 52 professors. From other sources we learn that, in Queen's College, Birmingham, there are 16; in New College, Manchester, 9; and in St. David's, Lampeter, 4 professorships, or similar positions—making, in all, 1190 persons in England who live, or may live, as men of letters, without being dependent on the exercise of a profession for their subsistence. To this number falls to be added not only the temporary scholarships and bursarships, but the College and University offices; and if we wish to exhaust the resources of England for learned purposes, we must further take into account the stalls in cathedrals, and other livings in the Church to which active ministerial

* *Italy.*—The condition of the Faculties of Law in the Italian Universities, as exhibited in the Report of the Faculty of Advocates, (Ap. A,) may be taken as a very fair criterion of the other Faculties, as they appear in the programmes for Bologna, Padua, and also Pisa, which lie before us.

*America.*—In the American Almanac for 1851, a list is given of 121 Colleges and Universities, extending, as to time of founding, from 1636, when Harvard was instituted, to 1849. From "Canada: its Growth and Prospects," a little work compiled from the best sources, by the Rev. Adam Lillie, and republished in this country, p. 41, *et seq.*, we learn, that in West Canada there is a university with a staff of well qualified professors, *to which important additions are being made*, besides Queen's, Victoria, and Trinity Colleges. In Canada East, there are nine Colleges, with an attendance of 1500 pupils; exclusive of the seminaries of Quebec and Montreal, the former with 22 professors and 385 students; the latter with 18 professors and 250 students.

† *The Statistical Companion*, by T. C. Banfield, Esq., Statistical Clerk to the Council of Education, and C. R. Weld, Esq., Assistant Secretary to the Royal Society. 1848.

duties are not attached, as well as a considerable number of positions connected with the richly endowed public schools,* *e.g.*, the Professorship of Law at Haileybury, lately held by the lamented Professor Empson. In Scotland, when we have said that there are 105 professors and lecturers in our four universities, we have mentioned every learned position within the land.

But let us consider the 1190 literary positions of England more closely. From their occupancy Scotchmen have hitherto been all but excluded. To far the greater number of Fellowships, especially in Oxford, conditions of local birth, descent, &c., are attached, which amount to a total exclusion of all but Englishmen; and in cases where such restrictions do not occur, an English education and an English degree are still requisite. These, from the expense attending them, have hitherto been within the reach only of a very limited number of Scotchmen. The first of these causes of exclusion we are now to see removed, and the other diminished almost immediately. Of the many changes recommended in the Statutes of the Universities, both of Oxford and Cambridge, that which the Commissioners urged with the greatest earnestness was the throwing open of the Fellowships; and for the adoption of this recommendation, in so far as Oxford is concerned, provision has already been made by the Legislature.† "Of the changes required," say the Oxford University Commissioners, p. 149, "perhaps the most important is that of removing restrictions on the elections to Fellowships. These restrictions are of various kinds. The most injurious are those which confine the Fellowships to natives of particular localities, to members of particular families, and to those who are or have been scholars in the College. The result of these various limitations, whether imposed by statutes or the practice of Colleges, is, that of 540 Fellowships, there are scarcely 20 which are open to general competition, and of these, few, if any, can be considered as absolutely free from statutable restrictions. Every other

* In speaking of Germany, we also excluded from our computations the Gymnasial professorships, though these are often held by persons of the highest accomplishments, and do not always imply that amount of drudgery which is laid upon every one in Scotland who embraces the occupation of a teacher. Some of the greatest scholars of Germany, Matthiæ, Butmann, Meinicke, Nægilsbach, Carl Passow, &c., have found their positions in the Gymnasia so congenial to their tastes, that they have manifested no desire to go over to the Universities.

† Oxford University Bill, 1854, sec. 31.

recommendation we propose depends, in a greater or less degree, on the removal of these restrictions."

The Cambridge Report contains similar recommendations, though, comparatively speaking, the Fellowships in Cambridge are open.

Then, as to the expense of University education. In speaking of the present state of matters in this respect, the Commissioners say:—"On the whole, we believe that a parent who, after supplying his son with clothes, and supporting him at home during the vacation, has paid for him during his University course not more than £600, and is not called upon to discharge debts at its close, has reason to congratulate himself." At p. 41, the usual cost of graduation at Oxford is stated at "£800 at least," and we believe those of our readers who know the subject best will agree with us in raising the sum to £1000. By adopting a system of residence without the Colleges, for which the 27th and 28th sections of the Statute, authorizing the institution of private halls, makes provision, the Commissioners tell us (p. 50) that they "see no reason why the degree should not be taken for £200, even if the student resided for 84 weeks during the four years. This estimate includes all that would be necessary for his support, except board during the vacations, with clothes and pocket-money for the whole year." Now, to make all possible allowance for those financial frailties by which the generous natures of ingenuous youths are so frequently beset, let us double the sum of the Commissioners. £400 is probably about the sum which a gentleman's son spends during his four years' course at a Scotch university, and if travelling expenses and other extras are taken into account, we do not see how a three years' residence at Oxford could cost him less.

Let us, then, take the sum of £400, as that which a Scottish father will in future have to set apart for the education of his son at Oxford. Greatly under this sum he certainly cannot procure him a university education, and indeed cannot support him anywhere, except perhaps in his own family. Now, if he sends him to Oxford, it is not unlikely that, immediately on his arrival, he may gain an open Scholarship, which will go far towards defraying his whole expenses; and even if he should fail in this, at the termination of three years he will be entitled to compete in this one university for any one of the 540 Fellowships which may fall vacant, every one of which greatly exceeds in

value the expense to which he has hitherto been subjected. As to his chances of success, the following paragraph from the Oxford Report is instructive:—

"It is calculated that the present length of the tenure of a Fellowship is about ten years. Supposing that such changes in the distribution of the incomes of the Colleges as we shall presently recommend should take place, it is probable that even then not fewer than 35 will become vacant, and be thrown open to competition every year. . . . . The university would thus be enabled to offer a sufficient provision to one-eighth of its graduates, in case their present number should not increase; and even if the increase should be as great as can reasonably be expected, it may be calculated that still a large proportion of those who graduated would, at the close of their career, be placed in a position of present and prospective honour and emolument. No other place of education in the world can offer such incentives to industry."

Suppose our Scottish youth, at the age of twenty-two, to gain a Fellowship of £300 a-year, there can be no difficulty, in case of necessity, of his paying back to his father, in the course of four years, the whole sum which he expended on his university education. Now as the chance of this occurrence can be raised by previous preparation almost to a certainty, and as parental partiality is likely to view it at all times as quite as great as it is, it is impossible to conceal from ourselves the fact, that as soon as the Oxford and Cambridge Fellowships are thrown open, a migration of our most hopeful students to the South, by which our Scottish universities and our Scottish nationality must suffer a heavy loss, is likely to be the consequence.

We are perhaps freer from anti-English prejudices than some of the more patriotic of our countrymen might think desirable, but we do confess that we could not see without regret the whole youth of Scotland thus cast in the mould of the English universities. We are persuaded that these institutions, from their very completeness, exercise on second-rate minds an influence unfavourable to originality and freedom of thought.* Such, as it seems to us, is peculiarly the case with Oxford. Her pupils are struck, as it were, with one mental die, and on

* See Macaulay's observations on the effect which the elaborate drill of the Jesuit Colleges had in suffocating original genius.—*History of England*, vol. ii. p. 60.

every subject which is presented to them, the opinions to which they give utterance, in place of being the results of their own individual thinking, are too frequently nothing more than an expression of Oxford views. But if there be one peculiarity in the intellectual character of our countrymen, as developed in their native academical institutions, that we specially prize, it is that openness and freshness of mind which is ready to receive new truth whencesoever it may come. Of this, many instances, past and present, might be mentioned. The philosophy of Newton was taught in the universities of Scotland long before it was substituted for the Cartesian hypotheses, in Newton's own university of Cambridge. In the present century, the modern philosophical opinions which originated with Kant, Coleridge endeavoured to introduce into England in vain; but even at his hands they were received without prejudice in a country, the national peculiarities of which, during his whole life, had been the favourite subject of his ridicule; and it is through Scottish channels that they are now daily influencing English thought. We have already mentioned the claim which Scotland has to the origin of those economical doctrines which, during the last fifty years, have been slowly working their way into England, and to the same source is to be attributed, not only the mechanical inventions which signalized the commencement of the present century, but the medical, and even the legal reforms, which are now running riot among our English neighbours. How greatly, too, is the systematic and scientific agriculture of the age indebted to the free experimental research of Scotland during the present century.

In proposing that something should be done, not only for the preservation, but for the development of an intellectual nationality which has been so fruitful in results, we propose only what has already been, or is about to be, effected in other parts of the empire. Any one who will look at the dates of foundation of the chairs and lectureships in the two ancient seats of English learning, will be convinced that even there, (before the days of the Commissioners, or the Bill in which university extension holds so prominent a place,) more has been done towards meeting the increased requirements of modern society than in all our Scottish colleges. At Oxford, eight professorships and one readership have been founded during the

present century;* and at Cambridge, in the same time, six university teachers have been added. The London University, with its Colleges, the University of Durham, and the smaller establishments at Birmingham, Manchester, Lampeter, and St. Bees, all fall within the same period. According to the numbers which we have given above, somewhere about 130 *new* learned positions have been created in England during the last fifty years. In Scotland, during the same period, great additions have no doubt been made to the medical faculties in the three universities which possess them; but as regards the faculties of arts, the additions have been few; and even where new foundations are mentioned, they will be found, on inquiry, generally to be adaptations (sometimes very unwise ones) of formerly existing chairs. Where, for example, is our equivalent for the chair of public law in the University of Edinburgh, which was abolished at the suggestion of that sagacious body the Scottish University Commissioners?†

SECT. 3.—*Ireland.*

It is with reference to Ireland, however, that statesmen, in recent times, have most unequivocally expressed their sense of the importance of a learned class, by providing new means for its support. By the Act passed in 1845,‡ for establishing new Colleges in Ireland, the Lords of the Treasury were authorized to issue the sum of £100,000 for purchasing land, and an annual sum of £7000 to any one College, but not to exceed £21,000 in all, for salaries of professors, and for premiums and exhibitions. In pursuance of this Act, as is well known, charters have been granted to three Colleges, called the Queen's Colleges of Belfast, Cork, and Galway. The buildings were completed in 1848, and the Colleges were opened in November 1849. In connexion with these Colleges, the Queen's University in Ireland, for conducting examinations and granting degrees, was established. By another Act of the same Session of Parliament, (c. 25,) the Roman Catholic College of Maynooth, which had already for fifty years drawn liberally on Imperial resources, was placed on a new footing, and permanently endowed

* By the new buildings which have been erected since 1812, one hundred and seventy new rooms have been obtained.—Appendix E of Report, p. 56.

† In the preceding and following calculations we leave out of account the Nonconformist Colleges and Academies of England and Scotland.

‡ 8 and 9 Vict., c. 66.

for the maintenance of 500 junior and 20 senior students; the Act vesting besides £30,000 in the Commissioners of Public Works for the erection of new buildings. By the institution of the Queen's Colleges alone upwards of seventy *new* positions for learned men were erected in Ireland at one stroke Of the increase in this respect which took place at Maynooth, we cannot speak with accuracy, nor is it important otherwise than as shewing the liberality with which the Legislature sometimes makes use of the public purse, for the advancement even of a very questionable form of the higher instruction.

Will it not be a want of all true patriotism if Scottish members of Parliament fail to urge the claims of Scotland for a liberality corresponding to that which has thus been already extended to the other portions of the empire? That provisions for a learned class are wanting in Scotland, we have greatly deceived ourselves if we have not already abundantly shewn; but before finally taking leave of this portion of our subject, there is one consideration to which we must call attention. In stating the whole number of professorships in Scotland at 105, we left out of view that this number includes the professional Chairs, and that those in the Faculty of Medicine are very numerous. We must take the Faculties of Arts alone if we wish to judge of what can properly be called learned positions in Scotland, and by this means the number is at once reduced to somewhere between 35 and 40.* When we put this number against those of the other Universities, English, Irish, and foreign, where the medical Chairs are not at all more numerous than with us, our deficiency comes out in its true light. Often in a single College at Oxford the Fellowships alone greatly exceed in number the whole learned positions in Scotland; and we have already called attention to the statement of the Commissioners, that even should their recommendations be adopted, "it is probable that not fewer than 35 Fellowships will become vacant and be thrown open to competition every year." We shall thus, not in England, but in Oxford alone, have nearly as great a number of learned positions open to competition every year as exist in Scotland altogether!

* There are several chairs of a general scientific and general theological character, which we scarcely know whether to regard as belonging to the Faculty of Arts, or as referable to their professional departments of medicine and theology.

## CHAPTER IV.

### GENERAL PRINCIPLES OF ACTION IN THE FORMATION OF A LEARNED CLASS.

What, then, is to be done? By what means, and in what manner, are we, in our poor and barren north, so to increase the efficiency of our universities, as to enable them to rival institutions which for ages have been gathering around them the riches of England, or of others which have the concentrated force of great despotic monarchies at their back? The difficulty, we admit, is a grave one; but, for the reasons which we have already mentioned, not, we think, insuperable at the present time. Let the existence of our defects be once fairly recognised by the public,* and the determination to supply them honestly and resolutely embraced, and the first great vantage ground will have been gained.

It is impossible to conceal from ourselves, that when we come to the discussion of details, much difference of opinion, even amongst seriously disposed and well-informed persons, is inevitable; but there are several general principles of action, in the adoption of which, we cannot help thinking, that something like unanimity ought to prevail.

SECT. 1. *The Twofold Function of the University must be recognised and vindicated.*

Of these principles, the first and most indispensable is, that we should keep constantly in view that double object, which the Association for the extension of the Universities has wisely set before it, viz., of rendering our Scottish Universities at once centres round which a learned class may form itself, and perfecting their organization as educational establishments.† In our opinion, the Association has not only given proof of its wisdom in thus assigning to itself a twofold task, but, by giving precedence to the formation of a learned class, it has exhibited

* "The opinion of plenty, is amongst the causes of want."—*Bacon.*

† See Appendix B.—No. 2.

an insight into the conditions on which alone the higher instruction of any community can be secured, which, in Scotland, we have hitherto looked for in vain. From what we have already said, it will be obvious that, in our own view of the matter, these two objects are so inseparable, that the attainment of the one necessarily involves the attainment of the other. There is this difference between them, however, (and for practical purposes it is very important,) that if we once succeed in forming a learned class, efficient educational institutions will arise as an inevitable consequence; whereas the experience of Scotland has already shewn, that by confining our efforts to the realization of the latter object alone, we may not only fail in bringing the former about, but run no small risk of missing both. As teaching establishments, our universities are scandalously defective; but we are nevertheless persuaded, that the low state of learning in Scotland is infinitely more to be attributed to our having failed to supply inducements to learn, than means of learning. Suppose the universities to remain in their present condition in every respect, whilst by arrangements connected with the professions or otherwise, a large number of prizes for learning were created in the country at large, can any one doubt that this single circumstance would itself change them, and change them for the better, more effectually perhaps, than they could be changed by legislative interference? But such indirect interposition in their favour we know to be impossible. We cannot create ecclesiastical dignitaries in the Presbyterian Church, or increase the number of our supreme judges beyond the exigencies of the public service, merely for the sake of encouraging learning. To do so, even were it possible, would be to effect imperfectly, at an enormous cost to the public, what we believe can be accomplished perfectly, at an expense comparatively insignificant. Nor is it only as holding out inducements to the cultivation of learning, that the multiplication of prizes, and the consequent formation of a class of persons who should adopt learning as a profession, would act on the higher educational institutions. By creating a continual supply of persons, specially trained for the professorial office, such arrangements would at once put an end to the present practice of filling up the few learned appointments which we have, either by members of the existing professions, or by recruits from the learned class of other countries. To both there are obviously many objections. As regards members of

the professions at home,—those whom natural gifts have best qualified for learned pursuits can rarely be expected, late in life, to abandon occupations which yield them incomes far beyond what either do, or ought to belong to the learned class, though the earlier assurance even of a very moderate competence would most probably have been sufficient to induce them to devote themselves to studies more congenial to their tastes. With reference to the learned in England and Germany—of the first, we can never hope to be rich enough to enlist in our service any but those who despair of the more tempting preferments of the south; whereas the last set pecuniary and all other temptations at defiance, when compared with the arrangements for intellectual culture and enjoyment which the society of their own country affords. Of the services of foreigners, besides, we can avail ourselves only in very exceptional cases, now that there has ceased to be a common language of the learned. For these reasons it seems pretty plain, that if the community is to have the benefit of efficient labourers in the field of the higher instruction, it must use such means as are necessary for their indigenous propagation.

SECT. 2. *This double object must be sought by a development of the Professorial System.*

That the defects of our Scottish Universities ought to be supplied in a manner consistent with their existing spirit and genius, is a principle which, to many,—though not, we confess, to ourselves,—will probably appear clearer than that which we have just propounded. Bacon tells us, that in such cases the first consideration is "direction;" and though we have neither the "amplitude of reward," nor the "conjunction of labours," of which he speaks, there are two reasons which induce us to think that the cardinal point of direction has, on the whole, been correctly fixed. Of these, the first is the results which, with means so inadequate, these institutions have already produced; and the second is, that one of the most prominent recommendations of the Oxford Commissioners, for the adoption of which Parliament has since made provision,* is the introduction of the professoriate to a greater extent into that university. It is unquestionably by combining, as will there be done, with the system which has hitherto prevailed in England, that of the Scottish and foreign universities, that a complete academical

* Oxford University Bill, sec. 40.

system can alone be attained. We believe, however, that, to the people of Scotland, in the meantime, the institution of new chairs, and the better endowment of old ones, will be more acceptable than the introduction of Fellowships, Scholarships, or even Tutorships, to any very great extent. But there is a farther argument in favour of the professorial system, which we fear we must regard, for the present, as conclusive, viz., its greater economy. Fifty new chairs in all, with half-a-dozen tutors to each university, would place the Scottish universities in a tolerably efficient state, as educational institutions, and supply no mean stimulus to the cultivation of learning; but fifty Fellowships would, we are persuaded, by no means produce all the benefits which the public would conceive itself entitled to demand as a return for the cost of their institution. As to the extent of endowment requisite for a chair, Bacon has fixed its measure once for all. "It must have a proportion answerable to that mediocrity or competency of advancement which may be expected from a profession." Scarcely a less sum would be required for the institution of a Fellowship, if its tenure were regarded as inconsistent with the practice of a profession. The only real difference between the two thus comes to be, that whereas a professorship is usually given to a man of mature age, for whose efficiency the public have the guarantee of work already done; a Fellowship is gained by competition, early in life, and very frequently serves no better purpose than that of putting a well-educated schoolboy at his ease.

That the professorial system, properly understood, is adequate to the double object of which we have spoken, the experience of Germany has abundantly ascertained. In Scotland, however, the idea of even seeking for anything beyond an efficient system of public lecturing by its means, is apparently so new, that we cannot but regard the want of familiarity with it as one of the most formidable obstacles which stand in the way of the formation of a learned class. When the Association for the extension of the Universities appended to one of their circulars a list* of a few of the subjects commonly professed in the universities of Germany, an amount of foolish bewilderment was exhibited, in many directions in which it could least have been anticipated, which proved too conclusively the contracted conceptions which were prevalent both as to the capabilities of the professorial system, and the functions of a university. The importance of

* Ap. B.—No. 1.

the subjects was not denied by any one who understood what they meant; but it was asked, "can any one acquainted with the present condition of Scotland expect that so many new professors would find students to attend their lectures?" The answer, of course, would have been, that the Association had no such expectation, but that, so far from the want of popular sympathy, in subjects of acknowledged importance, being regarded as an argument against their endowment, it furnished the strongest, and indeed only tenable, argument in its favour; *and this, in regard to the presently existing chairs, as well as those which were prospective.* To suppose the facts of the case otherwise,—to imagine that the general public, either now or at any future time, would call for and remunerate the labours of a learned class, either by attending their lectures, or by any other means,—would be to grant the premises of the voluntary or free-trade party in education;* and these premises once granted, the conclusion, that *all* endowments ought to be abolished, is irresistible.†

SECT. 3. *The question must be dealt with as one of wide national interest.*

There are obviously two methods by which the objects which we have in view may be sought—the one, a series of gradual ameliorations; the other, one comprehensive measure. For many reasons we prefer the latter, not only as likely to prove the most satisfactory, but as being by far the most attainable. It is vain to hope that any reform, however small or gradual, will be so universally acceptable as to disarm all opposition; and no error can, we believe, be greater, than to suppose that,

* See Official Report of Education in Great Britain, p. 76.

† We perceive that, since the publication of the circular above referred to, two of the subjects there recommended for separate teaching have been adopted by the Joint-Committee of King's and Marischal Colleges, Aberdeen,—those, viz., of Technology and the Philosophy of History. To these the Committee have added Mechanics and Engineering, and Modern Languages. To the first there seems to be this objection, that, in so far as it is a *science*, it is, or ought to be, taught in the classes of Mathematics and Natural Philosophy; and in so far as it is an *art*, it cannot, and ought not to be, taught in a university at all. As regards the second, it is very doubtful whether Modern Languages, which must be taught by foreigners, and for *each* of which there must be a separate teacher, are not better taught by private lessons, than by public lectures. The properly academical mode of taking up the subject which the Committee probably have in view, would be to have a chair, or lectureship, on Modern Continental Literature, or rather *two*, as proposed by the Association, seeing that it will be difficult to find a lecturer who is both Teutonic and Romanic in his sympathies.

in any disputed question, the amount of controversy will be in proportion to the magnitude of the proposal. Springing as opposition usually does, not from a difference of principle, but from a supposed conflict of interests, that which is offered to narrow measures is for the most part quite as acrimonious as that with which larger ones have to contend, whilst they labour under the farther disadvantage, that their power of surmounting it is necessarily less. The enthusiasm of the general public is easily enlisted in favour of a scheme which promises at once to realize a great social good; but as the generality of men can, of course, form no opinion on questions of detail, smaller proposals, however wise or urgent, are left to be supported and opposed by those whose connexion with them is far too intimate to render them dispassionate judges. All that the public ever learn of the matter is, that a contention has arisen—that some persons are zealously advocating trifling innovations, which some other persons are as zealously opposing; and the general presumption in favour of conservatism, as well as the argument from economy, being with the latter, the award of the great arbiter is, that "matters shall remain as they are."

If we estimate the probable results of any attempts at the introduction of slight improvements into the Scottish universities, we shall see that such is more than ordinarily likely to be their fate. Let us suppose, for example, that it were proposed to endow *one single additional chair in the Faculty of Arts of the University of Edinburgh.* The chair must fall under one or other of the four great departments of Mental Philosophy, Classical Learning, Natural Science, or Mathematics. Let it belong to the first,—and, if we are not greatly mistaken, its endowment will be opposed by the following parties:—1*st*, By all those who depreciate metaphysics—a numerous body, including, in addition to the whole uneducated public, nine-tenths of the cultivators of natural science. 2*d*, By all the existing professors in that very department, who will say, with some truth, that without creating in the university any very important attraction to new students, it might possibly diminish the number of those at present attending their respective classes. 3*d*, By the advocates of the voluntary principle in education. 4*th*, By all public economists, in Parliament and elsewhere. 5*th*, By the patrons of the university—at least, if it is proposed that the chair should be a Government appointment.

To all this opposition there will be no answer, except the decidedly expressed opinion of a small body of persons who, though seeing very clearly the importance of the subject, and the inadequacy of the existing means for its cultivation, will not be disposed to become martyrs for their improvement.

To calculate the probable fate of similar proposals in the other departments would be tedious, but we believe our readers will agree with us, that their case would not be very different from that which we have imagined. Classical learning and pure mathematics would clearly come in for their full share of opposition, and very nearly from the same quarters; and against any proposal in favour of natural science, the arguments of the voluntary party would tell, and tell justly, with double force. But of all these parties we are persuaded there are few who would not go along with us in our general argument, or would seriously oppose a comprehensive measure for carrying our conclusions into practice. On the contrary, we believe that, with the single exception of the voluntary party, all would speedily feel themselves so trammelled by their adherence to the general principle, as to be precluded from any very persevering opposition even to the details with which they could least sympathize. In one word, the general principle would, in our opinion, be far more popular, as it certainly is far more important, than any special arrangements whatever; and a comprehensive measure, clinging as it would do to this principle by many more holds than any single proposal, would, we are persuaded, be carried without difficulty by the voice of a high-hearted public, who love what is generous, and whose sympathies, in the main, are always with those who unmistakeably point upwards. The framing of such a measure as we contemplate will, no doubt, be a serious and anxious undertaking. The subject is so unspeakably important, that it becomes a solemn duty to see our way very clearly before we either move in it ourselves, or incite others to move in it. To anticipate a distant future is impossible, and with that we have consequently nothing to do; but if we set ourselves conscientiously and resolutely to work, we need not fear that we shall be able to form a sane opinion as to what lies at the door of this generation; and that opinion once formed, our course is already prescribed to us, —"Whatsoever thy hand findeth to do, do it with thy might."

## CHAPTER V.

### OF THE POLITICAL POSITION OF THE LEARNED CLASS.

Before we proceed to offer the few more immediately practical suggestions which occur to us for the formation of a learned class in Scotland, there is a question which dips deep into the principles by which their citizen and social position will fall to be regulated, and to which it is the more necessary that we should advert, as it is likely before long to demand, and, after some fashion, to receive, a solution,—we mean, the amount of direct political influence which is to be conceded to them.

SECT. 1.—*Of the Conditions on which Direct Political Power is due to a Learned Class.*

Political power may be claimed for a learned class as such, apart from and in addition to that which, on the ground of wealth or otherwise, would accrue to it through its individual members, either by that class on its own behalf, or by the community in name of the common interest. From whichever side the claim or the proposal may come, the ground on which it rests will be the same, namely, the peculiar social position and functions of the class in whose favour it is put forth. If it emanates from the learned themselves, or the Universities as their representatives, it will be to this effect. Citizen duties being, in every case, not the ground only, but the measure, of citizen rights, it follows that the latter emerge to the class, and to the individual in direct proportion to the extent to which the former are discharged. But it cannot be doubted that, in the existing state of society, these duties are discharged most efficiently by those who have cultivated their mental gifts with the greatest assiduity, and have developed their spiritual nature farthest; and it is consequently clear, that if there is a class who, in this respect, surpass the rest of the community, their claim to

political privileges will be greater than that of their fellow-citizens.

Or the argument may be founded, not on political right, but on political expediency. It will be admitted that, in a free state, political expression cannot, with prudence, be denied to any actually existing and operative social power, and further, that in the learned class such power does exist to a far greater extent than is indicated by their wealth. We have here a social force, of which a suffrage based on wealth can take no cognizance, and a consequent claim for direct representation.

The same line of argument, in both its branches, possesses equal force, and comes with a still better grace when urged by the rest of the community, and that not on behalf of the learned, but of themselves. In this case, the views of direct political justice and general expediency, will be strengthened by considerations directly arising from the common interest. Where an enlightened despotism exists, it is possible that the community may, without prejudice to its interests, dispense for a time with the aid of the general intelligence. One man of great ability may, and we know in a few instances has, charged himself with the whole public relations of his fellow-citizens, and has not only preserved internal tranquillity to the state, but has prosperously and gloriously vindicated its external position, with no other counsellors than those whom he himself has selected. In such circumstances the work of social and individual development may be tranquilly and securely prosecuted in the walks of private life, whilst all that is lost to private energy and manhood, is the great training school of public affairs. But in free, *i.e.*, self-governing states, such can never be the case. There, the character of private as well as public events, the whole tendency of the nation's history, is determined by the general spirit of the time, and it is the manifest interest of every individual whom that spirit governs, that political expression should be given to whatever elements of truth and soberness it contains. To exclude these is voluntarily to prefer an irrational to a rational control.

Whether it be urged in its own name, then, or in the name of the community, it would seem that the claim of a learned class to political representation is incontrovertible. But the conditions of the argument, in both cases, will suppose that this class

is efficiently discharging its own very peculiar and special duties. It must be more than a professional class, carrying on a certain portion of the business of the community, and remunerated by the community to the full extent of its services in money, for there the claim would either be altogether satisfied by the timocratic suffrage, or would merge in a much wider claim on behalf of the whole professional classes, which is not now under discussion. It must be something different from even the teaching staff of the professions, for in this body, as such, the public have no guarantee for anything beyond an acquaintance with the manner in which skilled labour may be dexterously performed. Nor is this view founded on the consideration that professional teachers frequently exercise the profession which they teach. There is no incongruity in an individual, or a class of individuals, being represented in two capacities entirely distinct, provided that the fact corresponds with the political interpretation, and that they do positively possess two separate spheres of activity and influence. A professional man may, and very often will, be a member of the learned class, and on this ground entitled to separate representation, just as he may, as a landed man, be entitled to vote in a county though he lives in a town. What we say, however, is, that as a teacher of his profession purely, he has no such separate sphere of activity and influence, and consequently can be entitled to no separate political status. The case will be different, no doubt, if the subject of his teaching be a *science*, even though that science should bear so directly on a profession as to be vulgarly regarded as one of its branches. Physiology and anatomy are intimately connected with medicine and surgery, but apart from these professions they have a universal scientific character, which entitles their professors to a separate status, which, strictly speaking, must be denied, not only to those who practise, but to those who teach, the various departments of practical medicine and surgery.

For political purposes, however, there is a still more important distinction that exists among the sciences themselves, according as they bear more or less directly on the relations of men to each other, and the laws which govern their social progress. There are sciences of matter, animate and inanimate, on the one hand, and there is a science of mind on the other, having its abstract expression in logic, metaphysics, and ethics, and becom-

ing concrete in politics, law, and history. Now, though the material sciences are by no means indifferent to civilisation, and, indeed, the greater part of the progress which it has made in recent times has been in consequence of their cultivation, they still do not occupy themselves with its laws, and have rather the effect of turning the mind from, than directing it towards, their contemplation. There are ten chances to one that the most eminent mathematician, physiologist, or geologist of the day, has bestowed less consideration on the laws which govern social progress than his next-door neighbour, who, as a soldier, a merchant, or a country gentleman, does not belong to the learned class at all. Of the science of mind, on the other hand, these laws are the proper subjects, either in their abstract and universal, or in their concrete and special manifestations, and consequently, are continually present to its students. If this view be correct, it follows that the social functions of a learned class can, properly speaking, be performed only by those who occupy themselves, more or less immediately, with philosophy or the mental sciences, and consequently, that some proof of application to this department of study is indispensable in order to raise up a claim to a separate political status on the part either of an individual or a class.

From these observations it will be apparent, that the only claim to representation which, according to the existing arrangements of our Universities, we should be disposed to recognise, would be one founded either on the possession of degrees in arts, or of literary or scientific university appointments; and that professional degrees, unless implying a previous examination in arts, should not entitle their holders to the privileges of the learned class. As regards professional teachers, if once admitted within the walls of a university, convenience would probably induce us to act on the presumption of general accomplishment, which their selection to this office by their respective professions would unquestionably raise up in their favour.

Such being the principles according to which it seems reasonable that a distinct political representation should be given or withheld, let us inquire how far they are in accordance, *first*, with the principles on which the suffrage was bestowed on the older universities, and, *second*, with those on which it is at pre-

sent claimed by the University of London, or might be claimed by the Scotch Universities.

SECT. 2.—*Of the Principles according to which the Suffrage was bestowed on the Older Universities.*

*Oxford.*—Both at Oxford and Cambridge the constituency consists of "Doctors and Masters of Arts, whose names are on the books." The degrees of Doctor of Divinity and Doctor of Laws, it is well known, are only nominally professional, and when not merely honorary, may, along with that of Master of Arts, be taken as a fair criterion that their holders are really members of the learned class. Then as regards Medicine, the following is the regulation which we quote from Ward's Translation of the Oxford University Statutes:—

1834.—*Tit.* 6, *Sect.* 5, *Chap.* 1.

"It is enacted, that every person shall, before he obtains the degree of bachelor in Medicine, reside four full years, or sixteen terms, in the same manner as scholars in the Faculty of Arts, in the University, and that without evasion; that he shall undergo a public examination among the same persons, and subsequently to that examination be bound to give his attention for three full years (*i.e.*, twelve terms) to the study of Medicine."

1850.—(*New Examination Statute.*) *Tit.* 9, *Sect.* 2 *Chap.* 1.

"It is enacted, in order that the Congregation of Regents may be the better informed of the learning and proficiency in literature of the candidates for the first degree, whether in Arts, or in Civil Law, or in *Medicine*, that every undergraduate shall submit to *two* examinations before he is admitted to supplicate for a grace, (for that degree.")

1833.—*Tit.* 6, *Sect.* 5, *Chap.* 5.

"It is enacted, that persons who wish to be advanced to the *doctorship* in Medicine, are to apply to the study of Medicine for three full years, subsequently to taking the degree of bachelor in Medicine, before they are admitted to acception in that faculty."

*Ibid. Chap.* 6, (*ad fin.*)

"Lastly, in order to supersede all question, we pronounce that all inceptors in Medicine are to enjoy the *same rights of voting* as if they had at some period become regents in Arts."

It thus appears that no one can take the degree of M.D. at Oxford until ten years after matriculation, and that four of these years must have been devoted to the study of Arts. Whatever may be thought of this examination in a medical point of view, there can be no doubt that it satisfies the citizen requirement.

2. *Cambridge.*—At Cambridge, matters are not quite so satisfactory, but, even there, there is a guarantee which is not without value. "Before a student can become a bachelor of Physic, he must have *entered on his sixth year*, computed from the date of his first admission at the university, *have resided nine terms*, and have *passed the previous examination.*"* This "previous examination," more familiarly known as the "little go," is no doubt of a slight description,—scarcely exceeding in its requirements the amount either of classical or mathematical attainment with which an average boy in England leaves an average public school. What we regard as the more important condition, is the lengthened connexion with the university, and contact with its influences which is secured.

3. *Dublin.*—At Dublin, the better arrangement of Oxford has been adopted, and there a B.M. must be either a B.A. of three years' standing, or an M.A. of two.

From this brief statement, it appears that the three universities which have hitherto sent members to Parliament, have done so in accordance with the principles which we have laid down, and that, though a portion of the constituency in each case consists of the holders of professional degrees, these, engrafted as they are on previous degrees, or following on previous examinations in Arts, are even a greater guarantee to the public, than the mere literary degree itself for learned habits and studies.

SECT. 3.—*Of the Principles on which it has been, or may be, claimed by the other Universities.*

Let us now see how the matter stands with the other schools of learning, on behalf of which the privilege has been, or may be claimed.

1. *London.*—The circumstances which led to the foundation of the University of London, will now, we believe, be recognised by all existing political parties, as furnishing a sufficient

* Cambridge Calendar, 1853. P. 35.

ground for its claim to an equal parliamentary representation, provided that it fulfils the conditions on which this privilege was originally granted to, and continues to be enjoyed by them. It had long been felt as a hardship, by a portion of the community, of great and constantly increasing influence, that, in order to participate in the privileges which that community had wisely set apart for its learned class, something more was required than those intellectual qualifications which all were agreed in exacting from its members. It was not enough that a man should be in a condition to discharge the citizen duties which the State recognises as an equivalent for increased citizen rights, it was further necessary that he should hold the creed which the State professed. Various unsuccessful efforts were made to remove this anomaly by throwing the old Universities open to dissenters, and at last, as a consequence of these repeated failures, in 1825, a joint-stock company was formed for founding a new University in the Metropolis. The want, which it was thus intended to supply, was so keenly and so widely felt, that the scheme was marvellously successful. Shares were taken to the extent of £160,000; a site was purchased; on the 10th April 1827, the first stone of the building was laid, and in November of the following year, the classes were in full operation. The first object of the proprietors was to obtain a charter, conferring on their institution the character of a University, with the right of granting degrees; but, after various negotiations for this purpose, they learned that the Government of the day had wider views, and their scheme was thus concisely expounded to the council.

"*Downing Street*, 19*th August* 1835.

"It is intended by the Government to take the following steps, with a view to provide a mode for granting academical degrees in London, to persons of all religious persuasions, without distinction, and without the imposition of any test or disqualification whatever:—

"1. The Charter sought by the Duke of Somerset and others, will be granted, incorporating the parties by the title of 'London University *College*.'

"2. Similar charters will be granted to any institution of the same kind, which may be hereafter established.

"3. Another charter will be granted to persons eminent in literature and science, to act as a board of examiners, and to perform

all the functions of the examiners in the Senate House of Cambridge; this body to be termed the 'University of London,' &c.

"9. All bye-laws and regulations for the conduct of the University of London, to be submitted to the Secretary of State, and thus made subject to parliamentary responsibility."

This well-considered scheme was carried into execution the following year; the charter, incorporating the new University, was sealed on the same day with that by which University College was incorporated, and the two greatest efforts for the organization and promotion of the higher instruction of which the modern history of England can boast, were thus simultaneously consummated.

For more than seventeen years England has thus possessed, in the older Universities on the one hand, and in the University of London on the other, as complete a system for ascertaining the extent of its learned class as is consistent with the genius of our institutions; and as the object of Government from the first, (as communicated to the Council of University College by the then Chancellor of the Exchequer, Mr. Spring Rice,) was to place the new University on a footing of "equality in all respects with the ancient Universities, freed from those exclusions and religious distinctions which abridge the usefulness of Oxford and Cambridge," it can scarcely be doubted that, if *political* equality can be claimed by its members on the same principles, it will be given to them on the first occasion on which a re-adjustment of existing constituencies takes place. If anything be required to render this event more certain, it will be found in the success which has attended the agitation for its accomplishment during the last four years. Lord Aberdeen has pledged himself, as Lord Derby did before him, that "the matter would be taken under the most serious consideration of the Government:" adding (to the numerous deputation which waited on him) this farther expression of his willingness,—"I beg you to believe, that I am not by any means making use of mere words of course, but I assure you that such will positively be the case." If to such assurances from the heads of two administrations we add the repeated declarations of such men as Lord John Russell and Sir James Graham, that in any future extension of the franchise the claim of science and learning must be more extensively recognised, we shall probably be guilty of no rash-

ness if we hold them as settling the general question, whether or not representation is to be given.

But, if we may judge of the spirit of the agitation by the parties by whom it has been chiefly carried on, there is another question, scarcely less important, which will fall to be decided, with reference to the University of London—viz., whether the principle which has been acted on in the older Universities, of giving the franchise to the learned class only, is to be adhered to, or a new principle of giving it to a constituency composed partly of the *learned*, and partly of the *professional* class, is to be adopted. In the University of London, a medical degree means neither more nor less than it purports. Beyond the schoolboy examination at entering the University, which may be passed at the age of sixteen, there is neither examination, attendance, nor residence for purposes of general study imposed upon those who are candidates for it, and though an admirable guarantee for professional training, it is thus obviously a guarantee for nothing besides. But in the claim which was put forward by the deputation, no distinction was made between this degree and degrees in arts; on the contrary, the case was rested mainly on the number of medical graduates. Nor is it wonderful that such should be the view of a deputation consisting chiefly of medical men, for in everything connected with the University of London, a decided preference is given to Medicine. In a letter from the Earl of Burlington, Chancellor of the University, to the Home Secretary, in May 1853, on the subject of the proposed alterations in the constitution of the University, we find the following recommendations proceeding from the Senate:—"That the qualification which should entitle a graduate to sit in convocation, should be a standing of five years for Bachelors of Arts, of three years for Bachelors of Medicine, and of five years for Bachelors of Laws, who have not graduated as Bachelors of Arts in *this* University, or the degree of Doctor of Laws, Doctor of Medicine, or Master of Arts." For university purposes, at all events, it would thus seem that three years suffice to give to the Bachelor of Medicine a maturity of wisdom to which Bachelors of Arts and Laws cannot attain under five, and that, even if the Bachelor of Laws should be, as he very often will be, a Bachelor of Arts of one of the ancient Universities! Now, if the same qualifications were adopted, as the

test of fitness to deal with political as with University questions, they would precisely reverse the principles which we have laid down, by giving, in so far at least as the Bachelors are concerned, the greatest amount of influence to those for whose ripeness the guarantee is the smallest.

But we are told by medical writers, that "the University of London is, *par excellence*, the medical University, as Oxford is in a special repute for classics, and Cambridge for mathematics;"* that the medical profession regard it as "a University which is essentially their own;"† and it is on this account, we imagine, that a preponderance in all respects, and on all occasions, is given to the medical element. Now this statement, if correct, may be of some value as regards the management of the internal affairs of the University. If it was the design of its founders, and is the desire of its supporters, that the University should be essentially a medical school, there is no unfairness in the interests of medicine being considered, even to the prejudice, if need were, of the other faculties. But out of such a state of matters no ground of claim to the suffrage emerges in favour of the medical graduates, at least on the principle on which it is held by the ancient Universities. The Inns of Court are essentially schools of law, and the position to which the medical graduates lay claim, is precisely the same as would be that of those of their members who had not graduated in Arts, if they demanded a political equality with those who had, on the ground that law, as the preponderating element, was entitled to bear rule in these establishments. The claim of the professional class generally to a separate political status may be good or bad, (on that subject for the present we offer no opinion,) but it cannot be rested on the *same* grounds with that which, in the case of the ancient Universities, has been recognised in favour of the learned class, and can become identical with it only by the imposition of what, in the higher departments both of law and medicine, we should rejoice to see imposed—namely, a previous literary training. There is no necessity for professional graduates passing through the form, whatever it may be, of graduating in arts. The system which prevails at Oxford may be adopted in London, that, namely, of sending them in for their examination along with those who are

* *Lancet*, 8th May 1852. † *Ibid.*, 4th August 1852.

to take the degree of Bachelors of Arts, and if they come out with a certificate of having passed it, the citizen qualification will have been completed, and their claim to the suffrage established as members of the learned class.

But another argument which is used in favour of conferring the suffrage on medical graduates, as such, is, that "the medical profession cannot at present be said to be represented in the House of Commons," and in proof of this assertion it is said that there are only two medical men who are members of Parliament.* By some persons this line of argument has been carried so far as to form the foundation of a claim to representation on the part, not only of the medical graduates of London, but also of the College of Physicians and the College of Surgeons. Now we regard not only the argument as unsound, but the statement on which it rests as untrue. The medical profession is as much and as fully represented in the present House of Commons as any other portion of the community, professional or non-professional, civil, military, or ecclesiastical, with the single exception of the learned class. If there are not many medical men in Parliament, the cause is to be sought not in any fault of the representative system, but in the peculiar character of the medical profession itself. The professional avocations of medical men, whilst they do engage in them, are entirely incompatible with parliamentary duties, and even were they willing to abandon them, it is not strange that they themselves should discover, or that their fellow-citizens should discover for them, that general studies which terminate at sixteen, and subsequent duties which confine their attention to the structure and changes of the human body, little qualify them for the senate. Even if the suffrage were conferred on them, as a profession, we question greatly whether they themselves would not soon come to be of opinion that their interests were safer in the hands of a well-trained lawyer, or an accomplished country gentleman, than in those of members of their own body. But the argument is attempted to be supported by the assertion, that there are many members of the legal profession in the Legislature, and the fact is unquestionable. It is forgotten, however, that these gentlemen are sent there, not by their own profession, but by the general community, *the medical profession included*, and that they have no advantage whatever over any

* Mr. Joseph Hume and Dr. Mitchel of Bodmin.

other citizen of the state, other than that which their professional and general training may give them. If a man chooses a profession which withdraws him from a particular sphere of activity, however envious of it he may afterwards become, he cannot, with reason, complain that his fellow-citizens do not come to his assistance and thrust him into it. A lawyer might as well grumble at not being made a bishop, or a statesman at not being appointed to a naval command, as a doctor of medicine sit down and bemoan his fate because he cannot in the general case be a member of Parliament.

Whilst we join then as heartily as any graduate of them all, in the agitation which is being carried on, in so far as it has for its object the extension of the franchise to that portion of the learned class which has been called into existence by, and now clusters round the University of London, we must reserve our expressions of sympathy with the professional part of the movement, till we have an opportunity of discussing it as part of the far more extensive scheme of general professional representation.

2. *The Scotch Universities.*—The same reasons which thus exclude the medical graduates of London from claiming the suffrage as members of the learned class, operate with still greater force against those of the Scottish Universities. Notwithstanding the celebrity which Edinburgh has so long enjoyed as a medical school, her medical degrees have not, for more than a quarter of a century, afforded even the slight guarantee for general accomplishment which is secured by the entrance examination in London; nor is it attempted to supply the place of a previous literary examination by any substitute however imperfect. There is no requirement of previous residence for literary purposes, no attendance on literary classes during the course of medical study, no school certificate required at matriculation, not even a limit as to age. The youngest and most ignorant boy may put himself on the books as a medical student, and at once commence that exclusively professional attendance which is to lead to his doctor's degree. At his final examination, we understand, he is required to give proof of a slight acquaintance with Latin—but this merely to the effect of enabling him to read or write prescriptions—and besides or beyond this there is no literary qualification whatever. "A smaller

amount," says Sir William Hamilton,* "and an inferior quality of liberal learning is, in Scotland, required to qualify for the highest honours and privileges of the profession, than even in Ireland is deemed necessary for the very lowest; so that the medical aspirant who finds himself, from want of Greek, unable to rise into a Dublin apothecary, is obliged to subside into an Edinburgh physician;" and farther on, he adds, "Medicine has now ceased in Scotland to be a learned profession; though even in Scotland learned medical men may be found, there is here no longer any assurance not to say of superior erudition, but any guarantee against the lowest ignorance afforded to the public in a medical degree. Even English grammar and spelling are, by the confession of Edinburgh medical professors, luxuries but not necessaries for those whom our University proclaims to the world as meriting and having received her highest honours in medicine." In these expressions and opinions Sir William Hamilton is unfortunately but too well borne out by the evidence of all the most eminent medical men of the day, *who were not themselves directly interested in swelling the number of medical graduates.* Even by the latter indeed, the fact as we have stated it, is scarcely contested, and all that they attempt is, to account for it, and to palliate it on grounds of immediate expediency. In behalf of these "*Doctores indocti,*" these "*φορτικοὶ* of Edinburgh," it is manifestly impossible to claim a separate suffrage on the ground that they belong to the learned class.

But what is still more deplorable is, that, as matters stand at present, these are almost the only graduates whom the Scottish Universities send forth in sufficient numbers to form anything approaching to a reasonable parliamentary constituency. Degrees in Arts are no doubt conferred by all the four Universities, but these from causes which Sir William Hamilton finds in the prevalent system of examination, are little affected by the best class of our youth. The Royal Commissioners in 1830 reported that the degree was utterly contemptible, and this most competent authority, in 1852, tells us that it is utterly contemptible still. But contemptible or not, the fact that it is contemned is sufficiently proved by the small number of those who, having passed through the curriculum of arts, and consequently being

* Report of the Royal University Visitation. Discussions, &c., Appendix III., p. 630.

eligible, offer themselves as candidates for it—particularly at Edinburgh. For a few years a different system was adopted, and the standard of qualification was greatly raised. The experiment, however, after a short trial, was abandoned as a failure, and Sir William tells us that "the laurel is now again principally affected by a few humble intellects, of the humblest acquirements, especially by those resident in England, where a degree in Arts is always of a certain reflected estimation."

It is out of this body, however, such as it is, that a constituency must be formed, if the suffrage is to be given to the Scottish Universities as at present constituted. The degree of Master of Arts is a guarantee for a residence of four years, for purposes of liberal study, and of attendance, in their proper order, on the whole of the classes in the curriculum of Arts; and the examination even as now conducted, certifies some acquaintance with the subjects taught. If the degree in such circumstances is worthless, its being so is a proof, not that its possessors have failed to avail themselves of the learned training of their country, but that their country has failed to provide proper learned training for her children. Relatively to the community, in, by, and for which they have been educated, they are entitled, on the strength of having taken advantage of its highest literary and scientific training, to its highest citizen privileges; and this without any reference to the question whether or not their claim to citizenship, in the general republic of European letters, may be tenable. That the holders of Scottish degrees in Arts are at present, for the most part, either Highland schoolmasters or English dissenting parsons, may be an unfortunate circumstance; but we hold it to be no ground for withholding from them, or failing to claim in their behalf, what is in truth one of the privileges of their order. *They are our learned class;* and until we can organize a better, we must make up our minds to acknowledge them as such. We must march through Coventry with our "tattered prodigals" in the meantime, as best we may, and take pains in future to recruit a more creditable batch.

It is no answer to this view of the question that there is a large class of persons in Scotland, not graduates of the Scotch universities, who are possessed of an equal or larger share of learning and accomplishment than those who are; for these persons must fall under one or other of the three following categories, on

behalf of none of which can the privileges of the native learned class be properly claimed. 1*st*, Most frequently they are graduates of the ancient universities of England, and as such actually recognised as members of the learned class, not of Scotland, but of England. 2*d*, They are graduates of foreign universities, have been educated at foreign schools, or in some way or other owe their acquirements to a residence on the Continent, in which case, *quoad hoc*, they are foreigners; or, 3*d*, They have been educated privately, or what amounts to the same, have declined to submit to the Arts-examination, and consequently cannot bring their acquirements within the cognizance of the State, for any public purpose at all. It might not be impossible to devise arrangements by which a portion of these persons, at least, might be admitted to the privileges of the home-bred learned class. During the whole progress of our history, it has been so much the custom for Scotchmen to be partially educated out of the country, that we should only act in accordance with the traditionary spirit of our society, by recognising degrees proceeding either from the English or Irish universities, or from such of the Continental universities as might be selected for the purpose; and with reference to persons educated privately, the Dublin system of admitting to an examination without residence, might, under certain considerations, be adopted. The main body of the learned class, however, in this, and every country, must consist of those who have received the highest literary and scientific training of the public educational institutions of the country itself; and if out of this body we cannot at present produce a satisfactory constituency, if we have neither a learned class nor the conditions of its existence in the present social arrangements of Scotland, our only remedy is that which we have already urged, viz., to direct our attention to the measures which are requisite for its formation.

## CHAPTER VI.

### PRACTICAL SUGGESTIONS.

On this branch of our subject we are far from wishing to speak with the same confidence which a strong conviction has forced upon us when treating of the necessity of a learned class, and the impossibility of its existence without the support of endowments beyond what the mere teaching requirements of the community call for. On these fundamental points, as well as on some of the more general principles of action by which their realization must be sought, we have already expressed a hope that something approaching to unanimity of view will come to prevail, and a consequent expression of undivided opinion to go forth from the intelligent and influential members of the community. As regards questions of detail, on the other hand, such agreement is neither possible nor necessary. Ultimately, they will fall to be disposed of by the ordinary machinery which the Legislature applies to such purposes, and all that is desirable in the meantime is, that they should be so brought before the public as to gain, for the cause of truth, whatever their discussion may yield.

SECT. 1.—*The Suffrage.*

From what we have said in the preceding chapter, it is obviously neither as a recognition of their historical, nor their actual importance, but simply as an incentive to their future development and activity, that we should counsel the extension of the suffrage to the Scottish Universities, on the same principles on which it is held by the ancient Universities of England. The effect of such a measure would unquestionably be, to enhance to some extent the value of graduation in Arts, and to do this must, beyond all question, be one of the first, if not the very first object of those who strive after the formation of a native learned class. It would be some small answer to the *cui bono?* with which all

Scotch students, as well of the prouder as of the lazier sort, at present, respond to the entreaties of the professors, that they should come forward for the degree; that from the moment of their graduation, they, as members of what must always be a small, and what ought always to be a select and influential constituency, would become the possessors of a larger amount of direct political influence than, in other circumstances, falls to the share even of the wealthiest commoners. Nor can it be doubted that something like a bond of brotherhood would thus be established amongst them. Here would be something that in after years they could claim,—a privilege which they could exercise,—in common. On the occasion of every election, circulars would be addressed to them, or visits would be paid to them by the more active members of their body, and out of such intercourse some sort of personal acquaintance could not fail to grow up. Besides, it would frequently happen that one of their fellows, of those who had sat on the same benches, heard the same lectures, gone in and come out of the same college-doors with them, would thus be a member of the Legislature,—not as it may chance at present as one of the independent accidents of after-life,—but in consequence of this very fellowship itself. To him it is natural to suppose they would go not only with their common, but with their personal interests, in preference to the ordinary representatives of the town or county in which their lot might be cast; and something like direct and tangible advantages might thus, at least sometimes and to some of them, accrue from their connexion with him.

SECT. 2.—*A better System of Examination within the University, and a better System of Patronage from without it.*

We have here classed together two methods of amelioration, distinct in themselves, but having this in common, that they have both been recently treated by Sir William Hamilton so fully, and to our mind so satisfactorily, that we shall content ourselves with simply referring to what he has written;—adding, on our own part, as regards the latter, one single observation, not by way of dissent, but of modification. After enunciating the conditions of what he regards as the only sound and trustworthy system of university patronage,* he says, "The

* Academical Patronage and Superintendence. Discussions, &c., pp. 352-354.

principles thus manifest in *theory* have been universally and exclusively approved in *practice*. Precisely as they have been purely and thoroughly applied, have universities always risen to distinction; precisely as they have been neglected or reversed, have universities always sunk into contempt."* In support of this assertion he has drawn largely on his vast historical acquaintance with the subject, and we freely admit that in all the instances of the older Continental universities which he adduces, the machinery of their patronage and superintendence, consisting of a board of trustees specially constituted for the purpose, "small, intelligent, perennial," may have greatly or even mainly contributed to their prosperity. But though we are disposed to go along with him to his negative inference,—that *without* such an arrangement no university will flourish long,—we are far from following him to his positive conclusion, (if he does so conclude,)—that with it every university will succeed, *and from this cause alone;* and consequently that, by the formation of such a board of patrons, without other means, we should insure the prosperity of our Scottish universities. In every one of the cases which he mentions there were other favouring circumstances which co-operated with the system of patronage. In the three great universities of Italy, for example, Sir William himself mentions an institution which has greatly contributed to the success of the German universities in the present day, and to the importance of which, for our own, we have ourselves frequently called attention; we refer to the presence of rival professors of different grades. "The endowed chairs were of two kinds—*ordinary* and *extraordinary*. The former, fewer in number, were generally of higher endowment than the latter. For each subject of importance there were always *two* and commonly *three rival chairs;* and a powerful and ceaseless emulation was thus maintained among the teachers. The ordinary doctors strove to keep up their celebrity,—to merit a still more lucrative and creditable appointment,—and not to be surpassed by their junior competitors. The extraordinary doctors struggled to enhance their reputation,—to secure their re-election,—and to obtain a chair of higher emolument and honour."† Who can tell how much of the world-wide fame of

* Academical Patronage and Superintendence. Discussions, &c., p. 355.
† Ibid., p. 357.

Bologna, Padua, and Pisa, may have been owing, not to their system of patronage, (which, for a portion at all events of the brightest period of their history, was in the hands of the students themselves,) but to this "ceaseless emulation," and to the encouragement which the extraordinary professorships afforded to men of learning to devote themselves, early in life, to the office of public teachers. The fall of the Dutch universities, *notwithstanding the continuance of this system of patronage*, is also, we believe, not solely to be attributed to its *adoption* by those of Germany. Sir William says, that they have lost their relative superiority,—which is a gentle manner of letting them down. It may mean much or little, but we believe we shall not understand more than he himself intended, if we construe it to mean that they have lost their pre-eminence altogether. Now, whilst their own system of patronage continued unchanged, if it alone was the source of their prosperity, it is hard to see why such a result should have followed from an arrangement, which, late in the day, placed others in this respect only on a footing of equality with them. All the advantages arising from a long previous adherence to the correct system must still have been on their side, and their established reputation would, *ceteris paribus*, still have enabled them to attract both professors and students with greater facility than their rivals. The truth is, there were many other causes for the change, amongst which perhaps the most obvious are,—the energetic cultivation and rapid development of the German language which took place during the eighteenth century, on the one hand, and the disuse of the Latin and neglect of the Dutch, on the other,—the increased patronage which the German princes, from the time of Frederick II., extended to letters generally, and the universities in particular, and the decline of literary patronage with the declining national importance of Holland, which commenced with the civil war of 1787, and was consummated by the revolutionary war of 1793, and the subsequent train of political events.

Our object in making these reservations, as we already stated, is not that we may give a qualified assent to the views of Sir William Hamilton on the subject of university patronage, but to guard our readers against the conclusion that, by their adoption in practice, all would be done that needs to be done for the Scottish universities. Whatever advantage might accrue from

a change in the system of patronage in occasionally attracting teachers of greater celebrity than the jealousy of the existing professors might induce them to select, or greater fastidiousness than those who are willing to submit to the ordeal of election by a municipal body, we gravely doubt if, apart from other changes, it would be the means of perfecting our universities as teaching establishments, or of furnishing us with a native learned class of much extent or importance.

SECT. 3.—*A Change in the Constitution of the Universities, by which Graduates should be permitted to take part in their Government.*

The change which we would propose in this respect would be one similar to that for which the graduates of the University of London have been contending so strenuously since 1848, and which there is now every reason to think will, before long, be brought about by their endeavours. The advantages which may be anticipated, from admitting graduates to share in the internal government of the universities, are very similar to those which we have mentioned as reasons for admitting them to the suffrage.

1. The first and most obvious effect of the arrangement would be, by increasing their interest in the universities, to render a permanent connexion with them more desirable, and thus to enhance the value of graduation.

2. It would tend to bind the graduates together, and give to them the feelings of a corporate body.

3. It would introduce a new element of youth and freshness into the government of the universities, which would have the effect at once of controlling the selfish views with which professors, and the ignorance and bigotry with which municipal patrons, have so often been charged.

4. It would probably be the means of inducing those alumni who, in after-life, became prosperous and influential, to promote the interest of institutions with which they had thus all along continued to be connected. It can scarcely be doubted that a large proportion of the endowments, from private sources, which have rendered the ancient universities of England the richest in the world, would have been lost to them if their graduates had terminated all connexion with them at the moment of gradua-

tion,—or rather if, as is common in Scotland, their students had quitted them without taking any degrees at all. That Scotchmen are not, in the abstract, averse to bequeath their means to public purposes, the charitable institutions of Edinburgh abundantly prove.

SECT. 4.—*A National Board of Examiners.*

A very obvious expedient for bringing about uniformity in Scotch degrees, and thus increasing the value of those which follow on a course of study at the provincial universities, would be the formation of one board of examiners for the whole country, similar to that which constitutes the University of London, and the Queen's University of Ireland. Such an arrangement, if carried out by Scotchmen, and in conformity with the ideas regarding scholarship and philosophy, which were prevalent in Scotland whilst she held a place amongst the learned and speculative countries of Europe, would have the effect of perpetuating that distinctive intellectual character of the Scottish people, on the value of which we offered some observations in a former chapter. Were such a scheme efficiently carried out, however a Scotch degree might rank as compared with an Oxford one in classics, or a Cambridge one in mathematics, the history of our previous intellectual life is a sufficient warrant for the hope that in mental philosophy it would take precedence of both.

SECT. 5.—*That Graduation in Arts be required for the Church and the Bar.*

1. *The Church.*—The full curriculum of Arts being at present imposed on divinity students, we can see no sound objection to their being required to pass a corresponding examination at its close. If it be said that additional expense would thus be incurred, which divinity students in many cases are little in a condition to bear; all that is necessary is, that some arrangement be made,—either by the Government or by the universities themselves,—by which the fees in their case should be modified to a nominal amount, and a certificate substituted for the actual diploma, as in the case of Bachelors of Medicine at Oxford. Again, if the Church should allege that it belongs to her province, rather than to that of academical authorities, to ascertain

the adequacy of the literary acquirements of candidates for the ministry, the reply would be obvious,—either that the present examination on entering the Divinity Hall might be retained, or that a certain number of clergymen, or theological professors, might, on such occasions, be admitted into the general board of examiners in Arts. If this arrangement were adopted, the whole body of the Scottish clergy, both conformist and non-conformist, (or such portion of the latter at least as had been regularly educated at the universities,) would be admitted to the academical suffrage, and a large, influential, and highly trustworthy constituency at once created around the universities, by which means not only they and the general community would be benefited, but, as we humbly think, the Church also.

2. *The Bar.*—Since the question of the higher instruction began to be agitated, regulations, of which the practical result will be very similar to those which we have suggested for the Church, have actually been adopted by the Bar. At a meeting of the Faculty of Advocates, held on the 21st July last, the principles embodied in the Report* to which we have already referred, were given effect to in the following resolutions:—

"1. That the existing regulations regarding the examination of applicants for admission to the Bar are imperfect and unsatisfactory, and require to be amended and improved.

"2. That besides the usual preparatory legal studies, a liberal education is indispensable to qualify a person to be admitted to the Bar, and that proper means should be adopted by the Faculty to secure that qualification, without imposing any undue restriction on the admission of members.

"3. That every applicant for admission to the Bar, who can produce evidence that he has graduated at a university, shall be held duly qualified as regards general scholarship; but every applicant who has not obtained a degree shall be required to undergo an examination on those branches of learning which are usually taught during the first three years at a Scotch university, or on such particular subjects as shall be thought sufficient to test the general knowledge of applicants.

"4. That all applicants for admission to the Bar shall be required to attend a university course for legal studies for a period of not less than two years, during which they shall attend the law classes, as well as the class of medical jurisprudence.

* See Appendix A.

"5. That a board of examiners shall be appointed by the Faculty, with such powers and under such regulations as shall be thought expedient, and shall be afterwards approved of by the Faculty.

"6. That in order to carry these resolutions into effect, the matter be remitted to the former committee, with power to the Dean, if he shall think fit, to add to their number; reserving for the future determination of the Faculty, whether the production of certificates by an applicant, that he has, during four years, regularly attended literary and philosophical classes in some university, and regularly undergone the examinations prescribed for students attending such classes, shall be equivalent to a university degree."*

The Faculty of Advocates here offer to Intrants, it is true, the option of a degree in Arts,† or an examination in general knowledge, leaving a third possible alternative open for farther consideration; but, in doing so, they have expressed an unequivocal preference for the first, which will, of course, immediately become the general, and at no distant period, we hope, the only mode of entrance. It was with feelings of pleasure, not, we confess, unmingled with pride, that we saw the profession whose resources and capabilities are the greatest in Scotland thus take the lead in the regeneration of the higher instruction. We sincerely hope that its members will not forget that the Report of their own committee brought before them the inadequacy of the Faculty of Law in our metropolitan university, both absolutely and relatively considered, not less clearly than that of their own system of examination; and that they will not be satisfied till they have wiped off a reproach which, in this matter, clings to

* Minutes of Faculty, of date 21st July 1854.

† We have seen nothing better either as a guide to a "pass," or as a measure of its extent, than the Nouveau Manuel des Aspirants au Baccalauréat ès Lettres, par Emile Lefranc, which is in common use in Paris, and which has now reached its twenty-sixth edition. Wherever an examination, of considerable extent, is imposed on a large class of persons, some such work as this, communicating precise information as to the manner in which it is conducted, in its various departments, is indispensable; and we shall hope to see a Scotch adaptation of the "Manuel," so soon as our examination in Arts shall have assumed a fixed and uniform character. Judging by the "Manuel," the art of "cramming," like most other arts, has reached considerable perfection in Paris, and there can be no doubt, at all events, that it is extensively practised. Wherever you cast your eyes, in the neighbourhood of the Sorbonne, they fall on some such intimations as these:—"Préparation à tous les Examens, Baccalauréats, Droit, Ecoles Spéciales"—"Enseignement préparatoire au Baccalauréat ès Lettres et ès Sciences"—"Aux Examens de Droit," &c.

them more immediately than to the other members of the community.

SECT. 6.—*A previous Examination in Literature for Students in Medicine.*

To the imposition of the whole curriculum of Arts on candidates for medical degrees, difficulties of a more substantial and permanent nature than those which we have been considering in the two other professions oppose themselves. In this case a long course of professional education is indispensable, and there are circumstances, against which it seems vain to contend, which render it necessary that it should be entered upon in general much earlier than most persons betake themselves to the study either of divinity or law.* The best arrangement probably would be, that previous to commencing their professional studies, an examination should be passed in those branches of knowledge which can readily be imparted to lads under say seventeen years of age, and that those subjects which call for the exercise of faculties which frequently do not appear till later in life, should be left to be studied during the course of their attendance on the medical classes. In this case, the first examination might be passed at entering the university, whereas the other, when such was preferred by the candidate, might form part of the final examination before quitting it. Such was the scheme suggested to the Royal Commission of Visitation by Dr. Davidson, one of the most accomplished members of the medical profession, in 1830; and though it would by no means put a Scotch medical degree on a footing of equality, as a certificate of general acquirement, with one granted either by Oxford or Dublin, it would then be pretty nearly as good as a Cambridge one, and somewhat better than one from the University of London. Were this or any similar arrangement adopted, no great injustice would be done either to the general community, or to the other graduates, if Doctors of Medicine were then admitted to equal political privileges with those who had taken the degree of Master of Arts.

* For our own part, we believe that little harm and much good would result from an arrangement which should prevent the Physician's degree from being granted, in the general case, before twenty-four, leaving the Surgeon's diploma, as at present, to be taken at twenty-one. There would be fewer Doctors in this case, but, as Sir William Hamilton says, "so there ought."

SECT. 7.—*Arrangements for securing more effectually the moral and social training of Students.*

We now approach a portion of our subject which seems to us of the highest importance, and regarding which we have the more anxiety, because we are not aware of its having been treated by others to the same extent as most of the topics on which we have hitherto touched. It will not, we believe, be denied by any who are acquainted with the working of the Scottish Universities, that one of their leading defects is the total isolation in which they leave the student the moment he quits the lecture-room. This fault, which is frequently, and, perhaps, not altogether unjustly, made a subject of reproach to the professorial system, is less felt in the smaller Universities of Aberdeen and St. Andrews, and we believe is in some degree counteracted by the constitution of the University of Glasgow; but in the metropolitan University of Edinburgh, it exists to such an extent as seriously to interfere with the usefulness of the Institution. Here students from the country, particularly those of the humbler class, who for the most part have no other means of making the acquaintance of their fellow-students, and of the professors, than the arrangements of the University afford them, usually feel themselves as much strangers and aliens at the end of their four years' course, as they were at its commencement. Social intercourse, and familiar interchange of ideas and sympathies, even for the time being, to say nothing of those lasting friendships which, under more favourable circumstances, spring up so readily betwixt fellow-students, are here as little fostered by the juxtaposition of the class-room as that of an ordinary city church. Each individual hearer seats himself in his accustomed place to listen to the lecture, as he would to take part in the service; and if he has any communication with his fellow-hearers, during its continuance, he of course commits a sin little less heinous than talking in church. In the ordinary case he quits, not only the lecture-rooms, but the College walls themselves, when his day of toil is ended, without interchanging a dozen words with any one; and if, on the occasion of examinations, reading of prize essays, or the like, some little conversation does take place among the students, it is rarely to the extent of making them acquaintances out of doors. The humanizing interchange of almost brotherly affection, and the jovial and, for the

most part, harmless intercourse which binds young hearts together, in the English and German schools of learning, is here unknown. The poor Edinburgh student celebrates with no songs his passage from the sterility of unconscious boyhood, into the rich and leafy summer of his days. In his solitary lodging he pores over the pages which his professor has prescribed for his study; but his newly-found faculties are whetted by no friendly encounter with kindred wits, his affections meet with none of the sympathy for which they yearn, and his passions take him by surprise, and often fill him with despondency. In this sorrowful sequestration from the genial influences proper to academic life, the better half of his nature seems given only to torture him, and lead him astray. If he is gregarious at all, he shares his intellectual and moral bewilderment with a few of his former school-fellows from his native village, who have had as little opportunity as himself of gaining the freer atmosphere of thought and feeling which a wider society of young men never fails to conquer for itself. Dull, clownish, and sad, he is an object of ridicule to the more fortunate portion of those who sit on the same benches with him, and of no very well founded respect to himself. The best that can come of him is a book-worm, and in such depressing circumstances, it is not strange that even his reading goes heavily and mechanically along; that the new thoughts which he encounters take little hold on a subjective nature so feebly stimulated from without, and that he goes into the profession (too often the Church) for which he has striven to prepare himself, by an amount of self-denial worthy of a martyr, with no better ground of confidence in his qualifications than that self-conceit which solitary mental toil is so apt to engender, even in minds originally modest, vigorous, and sane. But how is this cheerless picture to be reversed, and the sunshine befitting his age and occupations substituted for the shadow which has thus been artificially cast upon his life? The first thing which we must do is manifestly to restore him to the society of his fellows in years and studies, and, if possible, to bring him in contact with those who have enjoyed greater social advantages than himself.

1*st*, *Debating-Societies.*—The only existing institution by which this is even attempted to be done is that of debating-societies. By means of these something is even now effected,

and by better organization they might, no doubt, be rendered more efficient than they are; but under the most favourable circumstances, and more especially in the hands of very young men, they will be apt to degenerate into occasions for mere idle talking, to foster vanity and superficiality, and to take the tone of their loudest and shallowest rather than of their ablest and most polished members. Were a good staff of junior professors and tutors attached to the University, it might be possible, by putting these societies under their superintendence, to give to their discussions, in a manner adapted to the altered spirit of the times, something of the character of the "disputations" to which our forefathers seem justly to have attached so much importance. By selecting or suggesting subjects of a properly academic character, by taking part in the discussions themselves, and occasionally inducing resident graduates to join in them also, it would not be difficult for a very small number of professors and tutors effectually to remove the character of triviality which belongs to these societies at present; and as these persons need not be greatly more advanced in years than the majority of the ordinary members, there is no reason why their presence should cause restraint or engender formality in the proceedings. But as we regard the formation of a class of persons thus intermediate between the professors as they exist at present and the students, not only as the most effectual means of improving the teaching of the Universities, but also of removing the social evils of which we complain, we must speak of them a little more in detail.

*2d, Junior Professors and Tutors.*—Wherever the professorial system has been properly organized a gradation of ranks has been recognised in the office. The common division has been that mentioned by Sir William Hamilton as existing at Bologna, into ordinary and extraordinary professors, to which, in the German Universities, a third class, that of the so-called "*privat docents,*" (*professores privatim docentes,*) is added. But the names are of no consequence, and the minuter arrangements as to the relations in which the different orders stand to each other must be varied to suit the requirements of the different Universities, and adjusted so as to jar as little as may be with their existing organization. What we want is the thing itself, —a class of men to form a connecting link between the

students and the professors, properly so called, who ought at all times to be the most eminent representatives of their respective departments, to be found within the country, or who can be induced to come from abroad. It is manifestly impossible that these latter can ever see much of the student, without neglecting duties still more important, and which can in nowise be delegated. The interests of science and of human progress forbid such a serious encroachment on their time, and even were it otherwise, their distinguished position, and, for the most part, their age, render anything like intercourse on equal terms impossible. But no such gulf divides the student from the extraordinary professor. He is usually an aspirant to the office of the ordinary professor; but though his rival as a public teacher, his emoluments, unlike those of his superior, are almost entirely dependent on his popularity. If the senior professor is disabled from infirmity, or is so much engaged as to render it impossible that he should lecture, (as was the case with Guizot, Cousin, &c., in France, and with Schelling, Schlegel, &c., in Germany,) the ordinary professor supplies his place, either permanently or till some other arrangement is made; in the former case opportunity being afforded for another candidate for public favour to offer himself. The duty of conducting class examinations will naturally fall to the share of the extraordinary professor, and this he is in a condition to do far more effectually than it can be done by a senior professor. If his other arrangements admit of it, as they probably would in the smaller Universities of Scotland, it will be his duty to read privately with such of the students as either request his more special instructions, or as he himself judges to stand in need of them. In the larger Universities this duty would fall to be discharged by a third order of professors or tutors, (or perhaps occasionally by simple graduates holding a temporary appointment from the Senatus Academicus,) and as regards the whole of this latter class, their chief recompense would, of course, consist in the prospect of the distinguished career to which their office would be the regular and recognised entrance. A very small salary (say £100 a year) would, in such circumstances, probably be sufficient to secure the services of young men fully adequate to the task. It is to this latter class of academical teachers that we would chiefly look for removing the social evils which we have mentioned as existing in the Uni-

versity of Edinburgh. If the humbler class of students had the privilege of reading with these gentlemen *gratis* in their rooms, there are, we are certain, from the enthusiasm with which we know the poor fellows to be inspired, few who would not avail themselves of it, and the result would inevitably be an acquaintance of a very valuable kind, not only with the tutor himself, but with those who read along with them. Daily meetings in a private room of say a dozen persons at a time, where conversation would not only be admissible, but, if it had reference to the subject in hand, would be the chief medium through which instruction would be conveyed,—and these meetings, presided over by a young, accomplished, and often, it is to be hoped, an elegant man, could not fail, if continued for years, to have a refining effect on the most boorish, as they could not be otherwise than inspiriting and delightful to every one who was not altogether unworthy of entering academic walls.

3*d*, *A Common Table.*—We believe there are none of the arrangements of the English Universities, the adoption of which would be more likely to add to the happiness and to promote the social training of Scotch students than that of a College Table, at which the professors and tutors, or a certain number of them, and such resident graduates as might find it convenient, should dine daily, and which should be open to all students at a very moderate cost.* From the constitution of the Scottish Universities it is impossible that College Tables could be arranged in a manner precisely analogous to those in Colleges where all the students are resident, and under the control of the college authorities; it is a mistake, however, to suppose that the institution itself is incompatible with the professorial and non-resident system. For proof of this we have to go no farther than to Trinity College, Dublin, where a large proportion of those who dine regularly at the College Table do *not* reside within the College walls. But even if a small body of resident professors, tutors, and students were thought necessary as a nucleus around which college society might form itself, no very formidable obstacle seems

* Not much more than a quarter of a century has elapsed since the custom here alluded to was in observance in the University of St. Andrews. The bursars, and such other students as chose, dined within the College, at tables presided over by the professors in rotation,—the professor presiding for the time being called the Hebdomadar.

to stand in the way of its foundation in Edinburgh. By far the greater number of students at present reside in lodgings, which are neither so comfortable, respectable, nor economical as a well arranged Hall, (similar to the Private Halls about to be instituted in Oxford,) might very well be made; and to suppose that they would not willingly avail themselves of the offer of such a means of bettering their condition, is to suppose in them an aversion to improvement which we are not entitled to predicate of persons, for the most part, under forty.

In any attempt to introduce the custom of the Common Table into the Scottish Universities, the want of the beautiful dining-halls which exist in so many of the colleges of the ancient universities, and which add not only to their picturesque character in the eyes of a stranger, but what is far more important, exercise a refining influence on those who frequent them, would no doubt be severely felt. The present, however, is the age of the revival of Gothic architecture, and here would be as noble an occasion as could be found for calling the recovered art into play. But even though these, and many of the other indications of ancient wealth, were awanting for a time,—though both the hall and the table were of the plainest description, we feel certain that they would still confer important benefits on students, situated as we have represented many of those at Edinburgh to be. Though we do not altogether subscribe to the doctrine that

> Carols, and not minced meat, make Christmas pies,

we are clear that

> 'Tis mirth, not dishes, sets a table off;
> Brutes and fanatics eat and never laugh.

Nor, simple though, from the circumstances of many of those who ought to frequent it, such a table would necessarily be on ordinary days, is there any necessity that on festive occasions the sinews of the most substantial good fellowship should be awanting. The "brawne of the tusked swine," even "a fair and large boar's head upon a silver platter," might, without any very wanton extravagance, be "carried up to the principal table in the hall with great state and solemnity" at the merry Christmas season, and its appropriate carol—

> "Caput apri defero
> Reddens laudes domino," &c.,

would be as appropriate at the University of Edinburgh, as at Queen's College, Oxford, or in the Inner Temple.

*4th, An Academic Dress:*—The adoption of an academic dress would also, we believe, contribute towards giving to the students a corporate feeling, and generating an *esprit de corps.* It exists not only in the English Universities, but in the three older Universities of Scotland; and in all of them, we believe, good effects result from its use. The students of Germany supply its place by a grotesqueness of attire, which it is very undesirable that our students should imitate, but which, in the absence of a costume of their own, they very probably will imitate, should they ever gain sufficient confidence in their position to venture on a distinctive character at all.

*5th, Additional Endowments.*—But these, and all other means which have been, or may be suggested, for improving the efficiency of the Scottish Universities, and forming a learned class by their instrumentality, presuppose the existence of increased endowments for the encouragement of learning, and the support of literary and scientific labourers. Even supposing other improvements to be separately possible,—which we believe them to be only to a very limited extent,—we are persuaded that they would prove utterly inefficacious if regarded otherwise than as ancillary to this cardinal amelioration; nay, we go so far as to think that were this one point secured, all the others, in the hands of an active people, zealous, as we believe our countrymen to be, in the pursuit of a higher moral and intellectual life, would very speedily follow as matters of course.

Of the precise extent of such endowments it is impossible that we should speak without much information which we do not possess, and much consideration which would be out of place at the present stage of the discussion. But if having been "faithful in a *very* little" constitutes any claim to further liberality, the claim of Scotland surely is not weaker than that of Ireland; and this at least we can say with confidence, that a grant similar to that recently given to the Queen's Colleges in Ireland, would fully satisfy all the reasonable longings, even of those whose views, regarding the Universities of Scotland, are most advanced.

## CHAPTER VII.

### OF THE CAPABILITIES OF SCOTLAND FOR BECOMING THE SEAT OF A LEARNED CLASS.

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SECT. 1.—*The Physical Advantages of the Metropolis.*

Strange as it may seem to those whose imaginations have been in the habit of wandering to other lands in search of beautiful cities, we are willing to incur the charge of local vanity which may attach to the expression of our opinion, that in point of position, Edinburgh is not only unsurpassed, but is unrivalled by any city in Europe, with the possible exceptions of Corinth and Constantinople. To Rome, notwithstanding the seven hills, it is unquestionably superior, both in picturesqueness and variety, and we prefer it to Florence, to Genoa, and even to Naples. Venice is more singular, but we suspect our good citizens, accustomed to the free exercise of their limbs, would soon feel the monotony of a dwelling in the sea. Vienna, the gay and cheerful Vienna, cannot vie with it; much less the sandy and arid Berlin. The vaunted capital of our Gallic neighbours has no upland range whereon her children might woo the genius of liberty, as they sang the Marseillaise to the mountain wind,—no castled crag to remind them of that ultimate appeal from anarchy, of which they are often forgetful, —and its river, beautiful though it be, is but a sorry substitute for that noble arm of the ever-living sea, which stretches around us its protection, whilst it brings us its treasures. With the tame surface of London, its besmoked and besooted parks, its never-ending squalid suburbs, its mean brick-built streets, and the singular infelicity of its architectural monuments, to say nothing of the vulgar bustle of its countless money-making and money-spending millions, we deign not for a moment to compare our bold, grand, poor little town; and Dublin is only a more comely, because less plethoric, reproduction of her English mother.

Nor is it by comparison alone that we contrive to glorify ourselves. Sometimes we take an absolute instead of a relative view of the matter, and we say, not only has nature been thus bountiful to us beyond others, but she has positively adorned our city, and its vicinity, with nearly every charm which belongs to this region of the globe. When the man of Edinburgh issues from his door, be he poor or rich, if he be but the uncontrolled master of one short hour, he has only to consult his caprice as to whether it shall be spent in wandering luxuriously between corn fields, rich as those of Lombardy, and even more fruitful, under trees that would do no discredit to the shady Albano; in scampering like a Chamois-hunter along breezy cliffs, where the moss and the rock-rose find a scanty nurture; or in inhaling the invigorating breath of the "gladsome ocean," and in cheering his spirits as he gazes on

> "Ships, and waves, and ceaseless motion,
> And men rejoicing on the shore."

All this, as Lord Cockburn said,* is "hourly" offered to him—the dweller in a city,—the hand-worker or the head-worker, as the case may be; and thus living and enjoying, if he sighs for the smoky chimney, with its unblessed wealth, we will not grieve for his departure for a scene more worthy of his aspirations.

SECT. 2.—*Its Function.*

It must be pretty plain to those who have paid any serious attention to the position which Edinburgh holds among the cities of this country, that her real importance depends on her becoming the abode of those who pave the way for action, rather than of those who act—of those who sketch out the campaign of the future from a study of the past, rather than of those who work in the trenches of the present. For the man of action we neither have, nor can create, a field; in this sense our city is not, and never again can become a metropolis. A few lawyers may find a sphere of reasonable activity in doing the public business of the country, and in their case the rewards of a successful performance of their duties may satisfy a moderate ambition. They may become respectable in the highest degree, but their profes-

* Letter to the Lord Provost on the Best Ways of Spoiling the Beauty of Edinburgh.

sion,—or the practice of it, at all events,—can bring them little glory beyond the limits of their native town—it leads to none of the higher state preferments, and the very possibility of attaining to a peerage (that ultimate goal of an English lawyer's ambition) by its means, is, very unfairly as it seems to us, cut off. For the politician there is no field whatever, beyond what every town of equal size in the empire presents. Even for the mere animal activity of the sporting man, our city offers no fitting arena. With the man of trade and commerce we have already almost eagerly consented to part company. But if thus we must take leave of the πρακτικὸς in all his departments, and must even, reluctantly it may be, bid adieu to the πολιτικὸς, with a friendly shake of the hand and a *bon voyage*, it is only in order that we may clasp the θεωρητικὸς more warmly in our embrace. Do we murmur against fate? We believe, on the contrary, that what she seems thus to dictate, is nothing more than what every Edinburgh man of the better sort has already a thousand times done in his heart. We wish nothing but success and prosperity to those whose pursuits are different from our own; nay, the immediate consequence of a recognition of our special department, as a thinking rather than an acting community, will be a heightening of our good-will, since it necessarily removes those feelings of rivalry which must have existed, had our objects of ambition been identical with those of our fellow-subjects of Glasgow or Birmingham. Nor is even sympathy cut off by the distinction for which we contend, for, though dissimilar, our pursuits are by no means antagonistic. The political philosopher, the moralist, and the man of science, are indebted, one and all of them, in this country, chiefly to the trading and manufacturing communities, for the data from which they proceed, and the tests to which they appeal. Were it not for this constant reference to experience and experiment, their labours must speedily terminate in a vague, as they would have arisen in an objectless, theorizing. But even those pursuits which react most immediately on each other, are often by no means most successfully pursued, either by the same individual, or in the same circumstances. The quietest nook of a Cambridge cloister is a fitting retreat for an abstract mathematician, whilst the practical engineer, who is to test the value of his labours, finds a more congenial abode amid the cyclopean forges of Birmingham and Sheffield. Whilst we

acknowledge our dependence upon, and profess our sympathy with, the operative portion of the community, we must, at the same time, recognise the distinction which exists between their function and our own. We must not be for ever affecting a desire ourselves to enter upon a career of enterprise at variance at once with our history, our opportunities, and our tastes. It is not less important for communities than for individuals that the tentative period of life should have an end. "Male vivunt qui semper vivere incipiunt." We must read the past and interpret the present, and manfully and resolutely abide by the results.

But our readers may here meet us with the objection, that the only practical result of our reasoning is that matters should be left pretty much as they are. What guarantee, they may ask, do you give us, that we shall succeed in making Edinburgh a literary and scientific more than a mercantile and a manufacturing metropolis? To some extent, it may be admitted, that she partakes at present of the one character rather than of the other, but where is our assurance that we shall succeed in advancing her in the former course rather than in the latter? We reply, that, generally, no guarantee for the direction which future development will pursue can be stronger than that which is afforded by its past history, so long, at all events, as that history is not in conflict with present tendencies. Now, as regards Edinburgh, whatever may be the difference between her present position and that which she held as the capital of an independent state, no one will deny that her actual characteristics are, in all respects, those which have belonged to her ever since the Union; and if these are as we have represented them to be, a policy which proposes to avail itself of them and carry them out, will afford us all the assurance of success which the circumstances of the case render possible. The question then comes to be,—have we read the present aright?—and this forces upon us a closer consideration of the actual conditions of our society.

SECT. 3.—*The Characteristics of its existing Society.*

When we speak of Edinburgh as having ceased to hold out, to the man of action, the inducements of a capital, we must not be understood as saying that it has forfeited all claim to that character. Nothing can be more erroneous than to liken it to

such places as Bath, or Cheltenham, or any of the mere pleasure-towns of England, where such portions of the boundless leisure of the inhabitants as the daily newspapers and the latest novels are not sufficient to consume, are usually divided between yawning and whist, except where, by a still more felicitous arrangement, these latter amusements are combined. Edinburgh, after her quiet fashion, is a busy place enough, and, London excepted, unquestionably fulfils the idea of a capital more than any other city in this country. She has nothing of that air of a proconsular residence, which, while it confers on Dublin a certain external splendour, unfortunately renders her more like to what we imagine Calcutta, or Montreal, than to the capital of any European country, however small. There is no foreign ruling class in Edinburgh; what she has is Scotch, and what Scotland has is hers. The true centre of Scottish life, from her, as from the heart of the land, the life-blood of Scotland issues forth, and to her it returns freely again. Every Scotchman finds in her a common centre for his sympathies. The inhabitants of Glasgow, Aberdeen, Dundee, Perth, and the like, have no bond of union, other than as the inhabitants of a common country; but every man of them feels that he has a tie to Edinburgh. It is to her that he looks for his news, his praise, his influence, his justice, and his learning; and with reference to this latter circumstance, it is important for our present subject, that we should keep in view one very marked distinction between this country and England.

In England, the learned class is the clergy; with us, partly in consequence of our Church holding out no direct inducements to recondite learning, either in the shape of affluent leisure, or of high preferments attainable by its means, but most of all we believe, for the much better reason of the clergy devoting almost their whole energies to the discharge of the strictly ministerial duties of their sacred calling, such is not the case, and the function thus abandoned by the Church, in so far as it has been performed at all, has fallen to the Bar. We offer no opinion as to whether this is or is not as it ought to be, we simply state it as a fact, not unimportant in considering the present aspect and tendencies of society in Edinburgh. In Scotland, for centuries, the Bar has been regarded as the great intellectual club of the country; and latterly, since its political importance

as a profession has diminished, and the clergy have withdrawn themselves more entirely from secular avocations, it has partaken of this character even more than formerly. As an illustration of the extent to which this is now the case, we may mention, that in the University of Edinburgh, at the present moment, the whole of the Chairs in the Faculty of Arts, excepting those of Ethics, Latin, and Mathematics, are filled by members of the Bar, they being thus in the proportion to all other professions, of six to three,—whilst there is but one churchman of any kind, the professor of mathematics, who, we understand, is in English orders. In the neighbouring university of St. Andrews the case is similar; and even the far distant Aberdeen has not escaped their influence.

But though we have spoken of the Bar as a prominent example of the present tendencies and capabilities of Edinburgh society, it is not from it alone that we would draw our augury. We believe that among all the professional classes there is a remarkable unanimity on this subject. The other branches of the legal profession, though less frequently engaged in literary occupations, usually manifest no inconsiderable sympathy with those who are; and as regards the medical profession, the high position which our school has always held, and the celebrity of many of our practitioners of the present time, are sufficient guarantees for the liberal views and tastes of its members.

But apart from the professional classes altogether, we are persuaded that the feelings of the great body of the people are in harmony with the views which we have indicated. We believe that the pride with which an intelligent Edinburgh tradesman regards his native city, has quite as much to do with its former and present literary celebrity, as with any other circumstance connected with it. When he looks on the monuments which our gratitude has raised to the benefactors of our city in former times, he finds that, with scarcely a single exception, they commemorate the labours of men of letters; and he remembers that these men have not only earned for themselves, but have conferred upon us, a celebrity lasting beyond what the most successful career of mercantile speculation could have secured.

But when we have spoken of the professional and trading classes, we have by no means exhausted even the influential portions of our community. There is a large body of sojourners

within our walls, who compose a fluctuating, but as regards both wealth and position, by no means an unimportant part of the population of Edinburgh. These persons, we believe, are attracted to our city for the most part by one or other of these causes.

*First*, and chiefly it may be, as Lord Cockburn asserted,—By the beauty of the place.

*Second*, By the excellence and cheapness of the *elementary* education which they can here procure for their families. And,

*Third*, By the prospect which Edinburgh society holds out of their being here able to gratify those refined and cultivated tastes which they may have elsewhere formed.

That their residence among us is desirable for all classes of the indigenous population, but particularly for our tradesmen, to whom their presence annually brings a large accession of business, cannot be doubted; and in order to secure their continuance, or to increase their numbers, whichever of the above mentioned causes may have formed their original inducement, we can see no line of conduct more effectual than that which we here recommend. Nor is it unreasonable to hope, that so long as our endeavour is thus to gather within our city, to a still greater extent, those attractions which have already marked it out in their eyes as a suitable place of residence, their sympathies will not be confined to such an expression of good-will as their continued residence would afford.

SECT. 4.—*The peculiar attractions of Edinburgh for men of learned tastes.*

If such, then, be the leading traits of our existing society, they furnish, we should hope, a sufficient guarantee that men of letters will not be without honour amongst us. But beyond the caresses which we are ready to bestow on them, there are, if we mistake not, certain attractions peculiar to the place to which we have scarcely yet sufficiently adverted.

We have said that it is a capital to the extent of containing the springs both of action and thought, so far as Scotland is concerned, and that there is life enough circulating in it still to preclude the appearance of those fungous excrescences in the body social, which the stagnation of provincial towns is so apt to generate. But to the man of letters its negative are perhaps

more important than even its positive advantages. Amongst the chief of these we must reckon the circumstance, that from living in a community where few are idle, he is in a great measure freed from the inroads of gossip. Although eccentricity is unquestionably very often affected by those who, in their occupations and modes of thinking, differ in nothing from the vulgar, it is equally certain that in proportion to the grasp which men have of the deeper realities of life will their value for what is contingent and conventional diminish, and the consequences will be, particularly among the students of abstract truth, whose avocations rarely bring them in contact with the world, a style of living and acting inconsistent with the habits of those who are doing the ordinary business of life. The occupations of such men will almost necessarily give rise to habits which will seem strange to many, though in themselves they may be blameless, and, with reference to the objects for which the individuals live, positively praiseworthy. Those of this description will not only act without reference to effect, but, liberty being the first boon which they ask from society, they will feel seriously constrained and annoyed by any sensation which their irregularities may produce. They will have none of the consolations which, in all cases of annoyance, fall to the share of the pretended eccentric, who, conscious that to glory in the results of any course of conduct can never be his, finds, in the wonder which his mode of life excites, a recompense for the effort which his vanity has imposed upon him. Their eyes being fixed on the end, they ask only for an occasion to employ the means without constraint; but as few men, even of this class, are superior to the influence of opinion, they will feel thoroughly unconstrained only where they can escape observation. We are far from holding out so vain a hope as that Edinburgh can furnish a complete immunity from vulgar annoyance, but we believe it will be felt quite as little here as in any of the numerous circles into which the society of such places as London and Paris is broken up, and infinitely less than in any of the provincial towns of England.

But in addition to being delivered from the obtrusive curiosity of neighbours, the man of cultivated tastes will probably find that in Edinburgh he enjoys a comparative relief from other sources of annoyance, which elsewhere meet him at every turn. There is here, perhaps, as little of that foolish idolatry of mere wealth

as is consistent with the rudeness of the measure by which the common herd of mankind must ever mete their reverence; and even pedigree, for the most part, is valued only in so far as it is a guarantee for good manners. But what to the fastidious man above all things is valuable, there are few vulgar sights or sounds which he will here be called upon to endure. From the singular felicity of the situation, he can scarcely select a residence from which his eye will not be gratified by the sight of natural beauty; and even the architectural features of the city, though far from faultless, are unquestionably superior to those of any other British town. There is less of a squalid population than in most places of similar extent; and the lower orders, when not weighed down by poverty, are a good, and, as it strikes us, a handsome Saxon race. Even in the humbler matters which contribute to the everyday enjoyment of life, there are few things which either the senses or the imagination can desire, which are not within the reach of the moderately wealthy in Edinburgh.

SECT. 5.—*Edinburgh a type of Scotland.*

We have spoken of Edinburgh thus fully, not altogether with the view of applying to our country the maxim, that "Paris est la France." The great mystery of centralization was discovered by our old allies, long after our connexion with them had come to an end, and our northern metropolis consequently never held within it the springs of Scottish life, in the same sense in which those of French life are grasped by the capital. We do regard Edinburgh, however, as being, in a very peculiar manner, a type of Scotland, and the capabilities and aspirations of its society as representing, very faithfully, those of the better classes of our countrymen generally. Politically and commercially considered, we all regard ourselves as members of a wider community than Scotland, or even England. It is not within the limits of any one province that the activity of a British statesman can be confined, nor by its markets that the sales of a British merchant can be regulated. But we have already said, that there is a school of thinking which is peculiarly Scotch, which derives its nourishment certainly not more from English than from Continental sources, and from which the only recognised appeal is to the wide tribunal of civilized mankind. It is not Scotchmen alone who are interested in preserving the dis-

tinctive existence of this school. To close it, or to merge it in that of England, would be to shut up one of the most patent, and hitherto most frequented avenues to the temple of truth; and for such a deprivation, we are persuaded that neither we ourselves, nor the cause of general enlightenment, would be indemnified by any facilities which might be offered us for entering by other gates already sufficiently crowded.

Lastly,—Partaking, as we do, not only of the advantages of the richest, the freest, the most healthful, and most peaceful country in the world, but riding as it were at anchor in the most tranquil haven of this favoured land,—at some distance from the strife and bustle of a life more exclusively practical than that for which nature seems to have intended us,—we feel that we should prove unworthy of God's gifts, if we failed, by an adequate development of those institutions which our ancestors have bequeathed to us, to struggle on as a nation towards the realization of that destiny which we have invoked for our principal city—namely, of earning, in the most universal sphere of usefulness, the most lasting claim to human honour and gratitude, whilst at the same time we secure the still more imperishable crown which He has promised to those who, humbly and earnestly, seek to develop their subjective nature in accordance with His image.

# APPENDIX A.

## REPORT

ON

## "THE QUALIFICATION OF INTRANTS."

"25th *January* 1854.—Resolved, That a Committee be appointed to consider the existing regulations applicable to the qualification of Intrants into the Faculty, and the expediency of making any alterations on those regulations; the Committee to consist of the following Members of Faculty, viz.—The DEAN, the SOLICITOR-GENERAL, Mr. PENNEY, Mr. MOIR, Mr. DUNDAS, Mr. PATTON, Mr. JOHN T. GORDON, Mr. FRASER, Mr. JAMES LORIMER, Mr. W. G. DICKSON—Mr. FRASER to be Convener.

11th *July* 1854.

THE important subject which has been remitted to the Committee has occupied their attention during several months, and, although they have not been able to exhaust the whole wide field of inquiry which it opens, they now consider themselves possessed of materials sufficient to enable them to lay a report before the Faculty.

The existing regulations are intended to enforce three qualifications on intrants as indispensable to admission. It is required of every candidate that he give evidence of general scholarship; although the test—a knowledge of Latin—which has been selected for this object is little calculated to fulfil its purpose. Such knowledge may be possessed without much cultivation of the understanding; and the mode of testing it, by reading a passage from the Pandects *ad aperturam libri*, ensures but slight acquaintance with the Latin language.

The other two examinations are upon the Civil and the Scotch laws. These have, in recent times at least, degenerated into nearly a formal proceeding. The examination—slight and insufficient—might be safely ventured on, and has been safely gone through, by persons whose study of the subjects of Civil and of Scotch jurisprudence has not been great.

The only remaining ordeal through which the candidate must pass has still more degenerated than all the others. The preparation of a Latin thesis upon a title of the Pandects,

would,—if it had been incumbent upon each intrant, as was intended, to prepare it himself without assistance,—have implied a considerable amount of learning. But written as it is, in very many cases, by others than the person whose name it bears, it is no test of the scholarship of its professed author, and tends somewhat to throw ridicule upon the whole of the Faculty examinations.

Impressed with these considerations, the Faculty appointed the Committee. The evil which exists at present is, that while examinations and tests of the qualifications of the candidates are insisted on, these have become, either through inefficient working, or through insufficiency in themselves, unfit for the purpose.

The Committee were obliged to select one of two alternatives. The present examinations having become so unsatisfactory, it was due to the character of the Faculty itself that they should be either abolished or reformed. It remained therefore either to determine, on the one hand, that there should be no tests or examination at all—every person being admitted to the Faculty of Advocates, however qualified, and of whatever character, merely upon paying fees; or that, on the other hand, there should be an examination so conducted as to afford evidence of what the body has required with unvaried consistency during two centuries—a liberal education and legal knowledge.

The Committee had no difficulty in rejecting the first of these alternatives. They have failed to find in any civilized country an example of its existence, with one remarkable exception. That exception is the state of New York, and the inquiries (the result of which will be hereafter given) as to its working there, have convinced them that such a practice would be a misfortune both to the country and the law.

They therefore unanimously adopted the other alternative; and to enable them the better to pronounce a judgment upon the point, they determined to obtain as much information as they could, not merely of the previous treatment of the subject within the Faculty itself, but also of the practice of foreign bars. They will now state, in an abridged form, the import of the information so collected, before submitting the recommendations which they are prepared to make.

## I. The Bar of Scotland.

It is matter of historical fact, that Scotch lawyers, from the institution of the College of Justice down to a comparatively recent period, were in the habit of acquiring a knowledge of the civil law, and of completing their general education, at continental universities. Their education there frequently occupied a number of years; and, not contented with attending the lectures of the professors, they also sometimes attached themselves to some celebrated lawyer, at whose consultations they were present. It had come so much to be the prevailing practice, that in the reign of Charles I. it was thought "strange to see ane man* admitted to teach the lawes who was never out of the countrie studieing and learning the lawes." The reputation of several eminent French professors attracted to the French universities students from all quarters of Europe. After a time, however, the current changed, and Scotchmen went to Leyden and Utrecht, instead of Bourges and Toulouse.

On their return home from this foreign education, they applied for admission to the bar upon a petition which gave an account of their university studies. Here are a few illustrations from the records:

In the MSS. records of the Sederunts of the Court of Session (Library mark, 25.2.5), there occurs this entry, of date 3d January 1587:—"This day Mr. Alexander Sim, sone lawfull to Mr. Alex. Sim, advocate, one of the Commissaries of Edin$^{r}$., is admitted ane advocate upon his supplication, given in to the Lords in August last, mentioning that he had studied the laws thrie years in France, wher he had employed himself ordinar to the lawes, and sumtymes extraordinarily, resorting to the most learned and cunning men's lessons and conferences, till he wes called back yrfra be deceis of his parents."

On 4th July 1594, "Mr. Thomas Nicolsone gave in a supplicatione, bearing that he hade followed letters from his

* James Sandilands, Professor of Civil and Canon Laws in King's College, Aberdeen.—Spalding's History of the Troubles, vol. i., p. 179

youth, and had spent 7 or 8 years in oyir countreys; Thairfoir craved to be admitted ane advocat."

"Penult Maii 1600.—Robert Hamiltone gave in a supplicatione, bearing that he had studied the lawes at Paris," &c.

"11th June 1600.—Compeared Mr. Lewis Craige, and produced a supplicationne, bearing how he had been brought up at the schooles in this burgh till he perfected his course of philosophy, and then he went to France, where, in Poitiers, he studied the lawes be the space of two yeares and a halfe, whereof I have given some evidence to their Lordships; therefore desired to be admitted ane advocat, to the effect he might be able to attend on their Lordships' service, and other affaires of the country."—*Pitmedden MSS.*

"10th July 1605.—Mr. Jo^n^. Halyday admitted ane advocate, bearing he wes brought up at schools and philosophy wtin the burgh, and then passed to Poitiers, and studied the lawes be the space of 6 yeirs or yrby."

"Mr. Oliver Colt, younger, is admitted advocatt upon a bill, pedantikally bearing that, after the accomplishing of his studies 'in literis humanioribus' et 'finito cursu philosophiæ' in the college of Edinburgh, where he was 'donatus laurea artium liberalium,' and had studyed lawes 7 years in France, and mynds to be a profitable instrument in the Commonwealth."—*Pitmedden MS., sub anno* 1606.

"18 Jan. 1659.—This day Mr. Geo. M'Kenzie, student of law, gave in a supplication to the commissioners" (Cromwell's), "mentioning that he has these six years past been endeavouring to qualify himself for the office of ane advocate, both by studying the civil law abroad, in the universities of France and Holland," &c.

The practice of attending continental universities continued more or less down to near the end of last century. It terminated with the wars consequent on the French Revolution. As the French armies entered Leyden and Utrecht, the last resident Scotch teachers left; and the connection between Scotland and the Low Countries in matters of education then finally closed. How intimate this must have been is evident from the single circumstance, that in

almost all the universities of France, Holland, and Italy, Scotchmen were professors,* and Hadrian Damman of Bysterveldt, a Dutchman, was appointed in the year 1594 Professor of Law in the University of Edinburgh.† Education abroad does not appear ever to have been made compulsory by any regulation of the Faculty; and some of the ablest of the Judges, such as Lord Kames (see his Memoirs by Woodhouselee), never had the advantage, though admitting the expediency, of study out of Scotland.

The influence of this continental study was felt, as well in moulding the character and bearing of the men, as in modifying the law itself. It communicated the light of a good example, and gave the tone of a high principle to the profession. The refinement of education, the tastes of scholarship, and the fruits of study kept the Faculty free from many of the prejudices incident to its provincial position, and gave it an influence denied to more numerous corporations who have disregarded every system of law but their own. No circumstance has indeed tended so much to the formation of the simple and intelligible system of Scotch law, as the liberal training of the Judges who in former days made it. The institutions of Lord Stair are largely indebted to the circumstance, that its author was once a professor of philosophy.

The qualifications exacted from advocates were at different times matter of regulation by the Faculty and by the Court, separately, and by both conjointly. It seems generally to have been thought proper, on the part of the Faculty, to communicate their resolutions to the Court; they also sometimes got them confirmed; but they more frequently passed and enforced their resolutions upon their own authority, without the aid or sanction of the Court.

This, however, must be said, that from a very early period the Court lent all the assistance which their authority could give, to the efforts of the Bar, to uphold its character for learning. By a resolution of the Faculty, confirmed by the Court on 17th November 1610, advocates were only to be admitted "eftir they have past their course of phylo-

* See Irving's Scots Writers, and Tytler's Life of Craig.

† Irving, vol. ii., p. 222.

sophie, and hes bein brought up in some university, as student to the lawes be the space of two yeirs or thereby." (A. S. printed). Thereafter, two modes of admission were adopted —1st, Ordinary, 2d, Extraordinary. Admission in the *Ordinary* form could only be obtained after "a public and private examination" in "our law and the civill law," and by the delivery of "a public lesson." This ordeal was too severe for many candidates; and so petitions were presented to the Court, "craving to be admitted advocats without undergoing the ordinar tryall"—which the Court sometimes granted; and the admission so obtained was termed the *Extraordinary* mode. The object of this was to allow persons to become advocates who appeared of sufficient ability and knowledge, "altho' they had not studied the Roman civill law;" the Judges, however, being satisfied "of the person's integrity, good breeding, honest deportment, and fitness for exercising the office of ane advocate." All this opened a door to favouritism and abuse. The relations of the Judges "importuned the Lords to procure their entry that way, and thereby gave occasion to misconstruction and clamour." (A. S., 24th Nov. 1691). It was therefore enacted that the kindred of Judges must pass in the ordinary way; and the system of extraordinary admission only continued for a few years after the Revolution. (*Ibid*, and A. S., July 1688 and 25th June 1692).

MS. Minutes, Vol. I., p. 534.

On 22d February 1724, a committee which had been appointed to consider a proposal for examining intrant advocates, upon the Scotch as well as the Roman law, reported that "the proposal appears to us not only to the honour of the Faculty, but also for the interest and advantage of the whole nation, as tending very much to the preventing of persons entering into the society not endowed with a sufficient stock of knowledge."

From the Acts of Sederunt above quoted, it appears that examinations both on the Scotch and Roman law had been required so early as 1688 and 1691, and therefore it is not easy to understand why a proposal to examine in Scotch law is in 1724 treated as a novel idea. There is no evidence in the records that the report and proposal were adopted by the

Faculty till 16th January 1750; but, of that date, the Faculty resolved that the following regulations, now in observance (except Rule 3), should be adopted in the examination of intrants—1st, a private examination on the Civil law; 2d, an examination on the Scotch law; 3d, a public trial on the Civil law. These rules were approved of by the Court, and confirmed by Act of Sederunt 28th February 1750. MS. Minutes, Vol. I., p. 768.

The Faculty do not however appear to have been satisfied with merely requiring examinations in Scotch and Civil law. Six years afterwards a meeting resolved "that as it concerns the honour of the Faculty that their members should be versant in every part of polite literature, and more particularly in those parts of learning which are more immediately connected with the Roman law, they recommend to the private examinators on the civil law to examine the candidates upon the history and antiquities of the Roman law;" and a copy of the resolution was ordered to be sent to the professors of the university. No notice was taken of the Court. Nov. 30, 1756. MS. Minutes, Vol. II., p. 84.

The course of study was still further extended by a resolution come to in 1760. The Faculty, on the ground that it concerned their honour that their members should be versant in general learning, "and particularly in the law of nature and nations—the fountain of justice and equity—recommend to all young gentlemen who intend to offer themselves candidates for the office of advocate to apply to the study of the law of nature and nations." A copy of the resolution was ordered to be sent to the professors (but not to the Court) as before. Jan. 8, 1760. MS. Minutes, Vol. II., p. 127.

It appears from the proceedings at a meeting held on 5th January 1762 that the above resolutions as to the study of the history and antiquities of the Roman law, and of the law of nature and nations, had not "been properly understood, nor obedience given thereto;" a committee was therefore appointed to "lay down some proper method in order to carry the same more effectually into execution." The result was, that on 24th November 1762, the Faculty, instead of recommending to the *candidates* for admission as before, recommended to the *examinators* to examine the candidates MS. Minutes Vol. II., p. 147. MS. Minutes, p. 156.

upon the law of nature and nations—the best means of enforcing the study upon the candidates.

MS. Minutes, Vol. II., p. 259.

On 19th November 1760, the Faculty adopted the same resolution in reference to Greek and Roman antiquities; upon which they "recommended the private *examinators* on the civil law to examine all candidates." A copy of this resolution was ordered to be sent to the professors of the university, but nothing is said of the Court.

A new course of investigation into this matter was begun in the year 1777, in consequence of an observation from Mr. Crosbie, who stated "that of late there has been a great decline of knowledge in the Latin tongue among the candidates for the bar," and therefore he moved that the Faculty should take this matter under their consideration, and think of some proper remedy.

Jan. 17, 1777 Vol. II., p. 414.

A committee was appointed, but if they ever reported, the report has not been preserved. The subject was, however, resumed in the year 1785, when, upon the motion of Mr. M'Leod, "that as some misapprehension seemed of late to have been entertained as to the qualifications necessary for admission into this Faculty," a committee, composed of Messrs. G. Wallace, Wight, Maclaurin, Cullen, B. W. M'Leod, A. Abercrombie, Hon. Henry Erskine, W. Craig, Charles Hay, the Solicitor-General, and Mr. W. Tait—Mr. M'Leod, convener—was appointed to report upon the subject. They did report on the 18th July 1785, recommending several regulations which were "taken under consideration one by one. The Faculty, after making a few alterations, approved of them, and recommended to the Dean to lay them before the Court for their approbation." It does not appear that they were ever presented to the Court, nor can any trace of the regulations be found.

Feb. 26, 1785. MS. Minutes, Vol. III., p. 25.

MS. Minutes, Vol. III., p. 31.

On 10th December 1787, a meeting of Faculty was held at which no other business was done except agreeing unanimously to a motion made by the Dean of Faculty, Henry Erskine, to the effect that "candidates for the office of advocate shall hereafter, instead of being remitted by the Dean in the usual form, lay before the Dean certificates of their having had a regular and proper education; that these

MS. Minutes, Vol. III. p. 63.

certificates shall by the Dean be laid before the Faculty, who shall determine by ballot whether the candidate shall be remitted to the examinators or not."

This resolution was enforced by the sole authority of the Faculty, and without the Court's sanction, for four years. On 21st May 1791, the Dean (Henry Erskine) laid before the Faculty a "scroll of regulations respecting intrant lawyers," which was ordered to lie upon the table for the perusal of the members. At the same time it was "resolved that the ballot now in use, and which appears to the Faculty to be inadequate for the purpose for which it was enacted, shall be suspended; and that till the proposed regulations shall be passed into a law, all persons whose petitions have been remitted, or may be remitted to the Faculty by the Court, shall be remitted to the examinators for examination, unless some objection shall be stated to the candidate, and shall be sustained by an open vote of a majority of the Faculty convened for that purpose."

MS. Minutes, Vol. III., p. 165.

P. 166.

Nothing is said in the above minute as to the production of certificates of general education; but it is mentioned in the report of a committee in 1813, that the production of such certificates was enforced for a considerable time. The principal of the proposed regulations laid before the Faculty by Mr. Erskine were, that a committee should be appointed, to whom should be remitted every petition praying for admission into the Faculty—"That the said committee shall take the most effectual means in their power for being informed as to his education, situation, character, and manners, and to report to the Faculty their opinion whether he be in all those different respects such a person as may be admitted into the Faculty with advantage to the public, benefit to himself, and credit to the Faculty. That, in case the report of the committee shall be in favour of the petitioner, he shall be immediately remitted by the Dean to the examinators on the civil law, and his trials shall proceed in the usual manner, and in case the report be unfavourable, the petitioner shall be rejected. In case any petitioner shall think himself injured by such rejection, it shall be competent to him to lodge with the Faculty a representation of the grounds on which he objects to the report of the com-

MS. Minutes, Vol. III., p. 166.

mittee, and the resolution of the Faculty thereupon, which representation the committee shall be obliged within one week at farthest, after receiving the same, to lay before the whole Judges of the Court of Session for their advice, opinion, and directions *tanquam amici Facultatis;* and in case a majority of the said Judges shall be of opinion that the objections are insufficient, and that he ought to have been taken upon trial, the Faculty, on having this opinion laid before them by the committee, shall immediately instruct their Dean to remit such petitioner to the examinators in common form."

These regulations, which excited much attention at the time, were proposed in reference, not to any general scheme of professional training, but to meet a well-known and particular case, and were not acted on, and the subject dropped for some time. On the 11th July 1794, a committee (composed of the Lord Advocate, the Solicitor-General, Messrs. James Grant, Charles Hay, George Fergusson, Adam Rolland, William M'Leod Bannatyne, Robert Cullen, John Dickson, Fraser Tytler, William Tait, Sir Wm. Miller, Messrs. Charles Hope, David Home, together with the Dean and Treasurer) was appointed "to consider the propriety of the Faculty's adopting some regulations with regard to the future admission of intrants." They reported on 19th January 1795, suggesting a series of very strict rules, and amongst others, once more insisting upon a general education, in these terms:—

MS. Minutes, Vol. III., p. 264.

MS. Minutes, Vol. III., p. 275.

"That before presenting a petition to the Court for a remit to the Dean and Faculty, every candidate shall lay before the Dean certificates of his having received a regular university education previous to his having studied the civil law, and of his having studied the civil law two years in a university.

"If the Dean shall be satisfied from these certificates that the candidate has received such education, he shall remit the candidate to the above-mentioned committee. If the Dean shall not be satisfied, from the evidence laid before him, that the candidate has received the above education, he shall refuse to remit the candidate to the said committee, and shall lay his reasons for such refusal before the said committee, to be judged of by them.

"Where a candidate has been remitted by the Dean of Faculty to the said committee, or where, in case of the Dean's having refused to grant a remit, the committee shall be of opinion that a remit should have been granted, the committee shall, in terms of the Act of Sederunt 25th of June 1692, proceed to satisfy themselves of the candidate's '*integrity, good breeding, and honest deportment*,' and shall, within twenty-one days, and not longer, after the said remit or determination, decide whether the candidate is qualified in these respects. If they find him qualified, they shall grant him a certificate to that effect, on receiving which he shall be entitled to apply to the Court for a remit to the Dean and Faculty, in common form."

The decision of this committee, it was proposed, should be subject to the review of a committee of six Judges, whose decision was to be final. These resolutions were adopted on 9th February 1795, by a resolution carried by a large majority. The Court were not asked to sanction them. It does not appear from the records to what extent this resolution was acted on.

The subject slept for seventeen years. It was resumed in consequence of an intimation from the Court. "The Dean likewise informed the Faculty that about ten days ago he was sent for by the First Division of the Court, when the Lord President intimated to him that the Court were disposed to consider the publick speech or discourse of the intrant advocates to the Court and Faculty previous to their admission as now become an useless form, and might be abolished, and desired him to communicate this to the Faculty."

MS. Minutes, Vol. III., p. 279.

June 20, 1812. MS. Minutes, Vol. IV., p. 397.

The result of this communication was the appointment of a committee (composed of the Dean (Mathew Ross), Andrew Ramsay, John Clerk, John Connell, Alexander Maconochie, and John Jardine). Their report was delivered to a meeting of Faculty on 27th November 1813. This report recapitulates the whole of the previous proceedings of the Faculty in reference to the qualifications of intrants, and concludes with a series of regulations, the most important of which are as follows:—

"1*st*, The committee are humbly of opinion, That in future it should be required, as an indispensable requisite,

MS. Minutes, Vol. IV., p. 448.

that intrants shall have attended five years at an university, two of these years comprehending two courses of civil law at an university, and the third a course of Scots law at an university in Scotland. They are further of opinion that the attendance for this period shall in all cases be established by proper certificates; the certificates concerning Scots law to be produced to the preses of the examinators in that law, before fixing a day for the candidate's examination; and the certificates respecting the other four years' attendance to be produced to the Dean of Faculty, before remitting the candidate to the civil law examinators.

"2*d*. With respect to the examinations upon Civil and Scots law now in observance, the committee are of opinion that candidates should be more strictly examined than they have been for a number of years past."

MS. Minutes, Vol. IV., p. 450.

A majority recommended the abolition of the Thesis, and "with regard to the public speech made by intrants to the Court upon their admission, as this is not a part of the forms followed out in the Faculty, nor required by any express regulation, the committee are of opinion that this matter should be left to the Court to regulate as they shall think fit."

The Faculty, on considering this report, on the motion of Mr. Thomas Thomson, approved of the principle of the first resolution regarding the course of education, and remitted to the committee to draw up a detailed regulation on the subject; but it was resolved that it would be unnecessary to make any "alteration in the rules and forms of private examination on the Civil and Scottish laws now in observance; but, in making this resolution, the Faculty think it fit to declare that they regard it as the bounden duty of the private examinators not to grant any indulgence to candidates by which its effect, as a serious trial of their abilities and learning, may be defeated or diminished."

MS. Minutes, Vol. V., p. 9, p. 10.

The committee presented a second report on 5th March 1814. They reported that "it has been considered as of the utmost importance for securing and perpetuating the general respectability and professional usefulness of the Faculty of Advocates, that all those who are admitted into that body should have previously devoted their attention, during a suit-

able period, to the study not only of the laws, but also of the learned languages, philosophy, and the liberal sciences. Regular attendance at an university for the space of five years at least shall be required from every candidate previous to his admission into the Faculty.

"That every candidate for admission, previous to his private examination on the civil law, shall produce to the Dean and also to his examinators, certificates of four years' regular attendance as a student in one of the Universities of this kingdom or abroad, including two years' attendance upon lectures on the civil law in some university.

"That every such candidate, previous to his private examination on the law of Scotland, shall produce a certificate of his having attended at a Scots university lectures on the law of Scotland for one year, which year shall be understood to be over and above the four years' attendance required to be certified to the civil law examinators, and which shall be held to complete the five years of an university education."

The Faculty unanimously approved of the committee's report, and adopted the resolutions therein stated, and the Dean was requested to communicate them to the Court. He did so accordingly. On the 8th June 1814, "The Dean reported that he received a note from the Lord President, mentioning that the Court that morning had a long conference on the subject of the resolutions of the Faculty," and requesting a conference with the Dean and Council. The Lord President delivered to the Dean a memorandum in writing on the subject, containing the sentiments of the Court. That memorandum was in these terms:—"Memorandum from Lord President. The Court directed the President to communicate to the Dean, that they unanimously approve of the principle of the resolutions of the Faculty in regard to the qualifications of intrants, but in one or two particulars they are also of opinion that they require reconsideration. 1mo. Though the first resolution very properly sets forth the necessity that an advocate should be well versed not only in the learned languages, but also in philosophy and the liberal sciences, they observe that the second resolution does not sufficiently provide for the

MS. Minutes, Vol. V. p. 12.

last. For the terms required by the second resolution, of four years' attendance at a university, including two at civil law, might be fulfilled by attending two years at Latin or Greek, and two at law, without any attendance on philosophy at all. Whereas it would be much better to allow the languages to be acquired in any manner the student pleases. They will probably be acquired as well anywhere else, and to make the qualification four years' attendance at a university, of which two at least to be spent at the philosophy classes and two at civil law. Indeed, considering how young our Scots boys go to college, the Court rather think that five years' attendance at a university should be required, of which three at philosophy and two at civil law. If a boy goes to college at fourteen or fifteen, the latest age, he still would be only twenty when he begins the study of Scots law.

"In regard to the form of admission by the Court, the present practice of admitting the candidate by the First Division only was begun by President Blair, without any rule of Court, or indeed without any understanding on the subject, much less from any disrespect to the Faculty. It seems to have been naturally and lately adopted both by the President and the Faculty, merely because the President sits in the First Division and to save trouble to the Second. But the Court thinks there is much propriety in the suggestion of the Faculty, that in future the candidate should be admitted by the whole Court; but in regard to the ceremony, the Court are very decidedly of opinion that it belongs to them to regulate that (as expressed in the report of the committee of Faculty), and they are determined not to revive the old form which the Faculty themselves have allowed to degenerate into something worse than a farce. They think that the decorous thing would be for the Dean and his council (covered if they please) to present the candidate at the table as found qualified by the Faculty, and move the Court to admit him accordingly."—"C. H."

This memorandum was remitted to the former committee, with the addition of Mr. John Dickson and Mr. John H. Forbes, who on 25th June 1814, reported with new proposed regulations, to the effect that every candidate should be re-

quired to show certificates of a six years' attendance at a university, during at least two of which he should have been a student of philosophy, and during other two a student of civil law. These four years, with another year's attendance at such lectures as the student should choose, and a sixth year at municipal law, completed the proposed curriculum.

The Faculty did not approve or disapprove of this report. They, of this date, recommitted it, upon a motion by Mr. Robert Forsyth, seconded by Mr. John Jardine. On the 1st July 1815, the committee reported their opinion to be still as stated in the report.

Nov. 24, 1814. MS. Minutes, Vol. V., p. 22.

Nothing farther was done for two years. Another committee (composed of Messrs. John A. Murray, Robert Forsyth, George Cranstoun, Francis Jeffrey, Alex. Lumsden, Francis Sommerville, Thomas Maitland, and John Hope) gave in a report to a meeting of Faculty on 8th July 1817. This report is different from the report of the previous committees, in so far as it dispenses with a university curriculum as the *sole* test of a liberal education, while, however, it enforces the necessity of such an education, and proof of its having been enjoyed.

"1*st*. It appears to the committee that, whatever difference of opinion may be entertained with regard to the other regulations proposed respecting the admission of candidates, the mode proposed in the latter part of the report by the former committee of 26th June 1814, relative to the form of presenting them after their trials to the Court, is liable to no objection. That the practice of the candidate making a discourse or lesson on a text in the civil law to the Lords and Faculty immediately previous to his admission by the Court be abolished, and that from and after the day of next, instead of the Dean's assigning a subject of such discourse to a candidate who has been found sufficiently qualified, the Dean or Vice-Dean, or, in their absence, the senior member of the Dean's Council attending the Court at the time, shall appear at the bar of the Court, attended by some of the Dean's Council, and shall report to the whole Court assembled for that

purpose, that, in pursuance of the remit from the Court upon the petition of the candidate, the Dean and Faculty had taken trial of the petitioner's skill in law, and had found him sufficiently qualified, and shall therefore move the Court to admit him a member of the Faculty of Advocates accordingly. The committee have less difficulty in recommending this mode of admission, as they find it stated in the report of the committee 27th November 1813, that the public speech made by intrants was not a part of the forms followed out by the Faculty, or required by any express regulations, and as it has been laid aside for some time, they think that it would not be advisable to revive it.

"2*dly*. With regard to the study of law that ought to be prescribed, the committee are of opinion that the long-established practice of producing to the private examinators certificates of attendance at Civil and Scots law before admitting the candidate on trials, but which they understand has of late years gone into disuse, should be enjoined by an express order of the Faculty. And with this view, the committee recommend that after the 12th May 1819, the candidates should be required to produce certificates of two years' attendance at a class of civil law in an university, previous to their examination on civil law, and of one year's attendance at a Scots law class before their examination on Scots law.

"3*dly*. With regard to the literary and philosophical education of young men destined for the bar, the committee, after full consideration of the different systems which have been proposed as the basis of the regulations to be enforced by the Faculty, are of opinion that it would not be advisable to prescribe attendance at universities as the only suitable mode of prosecuting those studies which are important or necessary to prepare them for the profession in which they are to engage, or for the character which they will be called upon to sustain. They are decidedly of opinion that no set of regulations which can be enforced will afford any test of the attainments and learning of those to whom that mode of education shall be prescribed, and there is no reason to suppose that such regulations will increase that attention to literary pursuits which has hitherto prevailed among those

educated for the Scots bar. Your committee are also of opinion that much individual inconvenience may be occasioned by any regulation which shall enforce a long course of university education, to the exclusion of other systems of education, which may be more advantageous in the circumstances of individuals, and not less effectual in attaining the object in view. *At the sametime, the committee are fully aware of the importance of ascertaining the manner in which candidates for this profession have been educated, and they therefore recommend a regulation on the same principles as that proposed by Mr. Erskine, while Dean of Faculty, in* 1787, *and which appears to have been acted upon for some years after that period. The regulation at that time adopted was, that candidates should produce certificates of regular and proper education, and such other certificates as they may have obtained of the course of study which they have pursued.*

"*It appears to the committee that a regulation of this kind will sufficiently apprise the Faculty of the nature of the studies pursued by the candidate, without excluding any particular system of education, and will produce all the good which can be expected to result from regulations of that nature.*

"It also appears to your committee that some previous notice ought to be given to the Faculty before any candidate applies to be admitted on trial. With that view, your committee suggest that every petition by a candidate ought to be lodged with the clerk to the Faculty two months before it is moved in Court."

The first, second, and last paragraph of the report were approved of without a division. The third was approved of by a majority of twenty-three to twenty-one. The plan thus recommended has not been followed in practice. It is the laxest of all the plans that any committee of Faculty has ever recommended, and yet it is something extremely strict when compared with the loose practice of the present day, which dispenses with all certificates of regular education, and implies it merely from the capacity of reading (or professing to read) a few lines of law Latin *ad aperturam libri.*

A meeting was held on the 20th December 1828. There

was laid before the meeting a report of a committee of Faculty, signed by Sir James W. Moncreiff, Dean of Faculty, in which they made the following recommendations:—

"I. They are of opinion that it is highly expedient that some rule should be laid down, requiring a certain course of education as indispensable to qualify a person to be admitted a member of the Faculty.

"II. It appears to them that the rule ought to be moderate, and not such as to produce too great exclusion, or an appearance of an intention to exclude any persons who may be duly qualified.

"III. That, on these principles, it ought to be required of every candidate, before he is admitted to his trials in civil law, to produce a certificate of his having studied philosophy, by regular attendance of lectures in some known university, during at least one year or session, and of his having attended in some university during another year or session, lectures in civil law, *bona fide* delivered for the purpose of instruction.

"IV. That it ought further to be required of every candidate for admission, before being received upon his trials in the law of Scotland, to produce certificates of his having studied philosophy in some university, by attending lectures during a *second* year or session; such attendance to be competent at any time before the trials in Scotch law.

"V. That it ought further to be required of every candidate, before entering on his trials in Scotch law, to produce a certificate of his having attended a class of lectures on the law of Scotland in one of the universities of Scotland, during the period which may be laid down for completing the course of lectures on that subject by the rules of the university. In reporting their opinion on this point, your committee proceed on a belief which a communication made to the Dean, though not properly before the Committee, leads them to form, that it is the intention of the Royal Commissioners in the universities

to recommend the extension of the course of lectures on the law of Scotland to two sessions.

"Your committee report these proposed regulations chiefly on the principle of requiring four years of study in a university, before any individual can be admitted to the bar, and, at the same time, the regular pursuit of the study of law as a science before this can take place. They assume in this scheme, that in all probability every person who complies with it must have previously undergone a sufficient preparatory education in classical and other branches of liberal study. But being of opinion that the period of university education, to be rendered indispensable, ought not to be less in any case than four years, they have to observe, that if it should happen that the course of the lectures in the law of Scotland should not be extended to two sessions, they should then humbly recommend that another year's study in a university, in general literature and philosophy, should be required, distinct from the course of study in the civil and Scots law, which would then be limited to two years."

At the meeting to which this report was made, a letter was read from the Earl of Rosebery, chairman of the commissioners for visiting the universities in Scotland, transmitting to the Faculty "a copy of a scheme for the future education of students of law in the universities." This scheme was remitted to the committee on the qualification of intrants, by whom a report was given in at this meeting. On the ground, apparently, that the Royal commission, then making an investigation as to the universities, would devise some course of education for lawyers, nothing further appears to have been done upon the report of the committee signed by Dean of Faculty Moncreiff, except approving of a small portion of it.

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The preceding narrative shows that for nearly two centuries there has been a nearly uniform and consistent course of regulation in reference to this subject. Amid all the different schemes, there has been a marked uniformity

of object and purpose. The constant endeavour has been to elevate the general course of education, so as to prevent the mind being warped, contracted, and impoverished by a too exclusive devotion to one pursuit. They have united in requiring, if not a university curriculum, at least such an examination as gave evidence of general learning, and an acquaintance with something more than the mere technicalities of professional practice.

It will also have been observed that the Faculty seem latterly to have abandoned the idea of an investigation into the private character of the intrants, which formed a branch of the preliminary inquiries suggested by former committees, and was enacted in the Acts of Sederunt of 1688 and 1691, in reference to the "extraordinary" mode of admission.

## II. Law-Schools of Scotland.

As it seemed desirable, in an inquiry of this sort, to have information not merely in regard to the regulations of the Faculty themselves, but also in regard to the schools at which students may acquire a knowledge of the law, the Committee give the following notes as to the extent of university education on law which can be found at this day in Scotland:—

1st, Edinburgh.—Although it appears that, so early as the year 1590, there were both professors and teachers of the law in the University of Edinburgh,* yet the royal commissioners for the examination of the universities seem to be correct when they say that the present Faculty of Law in the University of Edinburgh is of very recent origin. "There were," say the commissioners, "no materials for the formation of the Faculty of Law till 1709, when the civil law class was instituted, there being before that period no kindred class but that of public law, which had been founded two years before. The class of Scotch law was not established till the year 1722; and it is not till a few years after that period that there is any

* See Irving, vol. ii. p. 222.

notice of a separate Law Faculty to be found in the records or minutes of the university. To this Faculty the class of conveyancing was, upon the motion of the Faculty itself, added soon after the erection of that professorship (1825).*

With reference to the civil law class, it is stated that "up to the period at which the examination by us (the commissioners) took place, this class was divided into two branches, the first class being devoted to the Institutes of Justinian, and the second to the Pandects."† Each of these classes met for one hour a-day five days of the week. This arrangement was, as it appears to the committee, injudiciously abolished on the recommendation of the commissioners, and the class reduced to its present condition of a single lecture once a-day, on a subject, to obtain a moderate acquaintance with which, requires at least the study and application which it formerly received.

As regards the Scotch law class, the commissioners report that "the lectures on Scotch law should embrace both the civil and criminal law of Scotland; but Professor Bell stated in evidence that he cannot find sufficient time in one course for the civil part of our jurisprudence, in the way in which he thinks it should be taught; and that he had not, when he appeared before us, entered at all on the criminal law. His predecessor, Baron Hume, had lectured two years separately upon this subject. Indeed, the professor admits that the session of five months is too short for the work which ought to be performed. For the full discussion of the subject, two classes would be requisite; and Professor Bell is of opinion that both of these ought rather to be taught at different hours in winter, than one in winter and one in summer." This suggestion was adopted by the commissioners; and they recommend that "Scotch law should be taught either under two divisions, civil and criminal law, or two hours should be appropriated to it."

P. 50.

P. 50.

P. 101.

The history of the class of "Public Law, and the Law of Nature and Nations," which was the first endowed in the university, is somewhat curious. "Although this class be

* General Report of the Scottish University Commissioners, p. 21.

† *Ibid.* p. 48.

regularly advertised with the other classes of the university, the present incumbent has never delivered any lectures. His predecessor, the late Lord Meadowbank, gave a course of lectures in the year 1780 or 1781, but the study of that branch of law having fallen into neglect, he gave it up; and although, in 1795, he resumed the subject, yet the result being the same, he, after giving a few lectures, desisted, so that there has been no regular course for about 46 years." . . . . "The fact," say the commissioners, "that the class of public law has thus been annihilated, is a singular one in the history of literature. At one period it was thought the most important, perhaps, of all branches of liberal instruction, and for a century after the time of Grotius, it attracted more attention than any other part of philosophy; and yet for many years, though entrusted to men whose talents would have qualified them to do it ample justice, it has been regarded with complete and hopeless indifference. It is proper to observe, however, that it is given in evidence, by Mr. Thomas Thomson, that it might be made a class of the very highest attraction, and of great utility, and that this might be effected by the appointment of a man of pre-eminent talents and learning." Notwithstanding this opinion, the commissioners recommend that "the class of public law should be abolished;" and the suggestion was adopted.

P. 52.

P. 101.

The real cause of the failure of this class probably was, that the professors confined themselves to what was called "the law of nature" (legal ethics), which, in the hands of an ordinary lecturer, would very readily degenerate into a repetition of moral common-places, to the exclusion of public or constitutional law, properly so called, or the relations of the citizen to the state. That classes might have been collected for this latter subject few can doubt. It was tried in Glasgow with pre-eminent success, by Professor Millar, at the very time at which the public law class in Edinburgh is said to have miscarried, and it is now successfully taught both in the continental universities, and in the University of London.

Report of the Commissioners, p. 30.

2*d*, GLASGOW.—In the original foundation of the University of Glasgow, the faculties of theology, canon law,

civil law, and arts, are expressly enumerated. The teaching in the faculties of law, however, seems to have fallen into disuse, till it was revived in 1714 by the appointment of a professor of civil law. Since that period there has been one professor of law in the University of Glasgow, who teaches usually Scotch law only, but who has also occasionally taught civil law in a separate class.

*3d*, St. Andrews.—In the papal bull by which the institution of the University of St. Andrews was sanctioned, in 1413, by Benedict XIII., the study of the canon and civil law is enjoined, and in the second erection of St. Mary's College, in 1553, the canonist, who was to be in priest's orders, and "*sacrorum canonum licentia decoratus*," was to teach canon law on five days of the week. At present there is no endowment for a law school.* Report, p. 53.

*4th*, Aberdeen, *King's College*.—At its first erection in 1494, by the bull of Alexander the Sixth, the "General Study or University of Old Aberdeen" included the subjects of civil and canon law; and by the new erection, there were to be doctors of canon and civil law, and a class of students who were to "study civil law, and be present at the lectures delivered on that subject." This class, it seems, still exists, though it is said by the commissioners to have been "long inefficient." Report, p. 8.

*Marischal College*.—In this institution, which was founded after the Reformation, there was originally no school of law, but there is now attached to it a lectureship on Scotch law and conveyancing.

## III. Bar of England.

On the motion of Mr. Napier, member for the University of Dublin, the House of Commons recently presented an address to the Crown for the appointment of a commission "to inquire into the arrangements in the Inns of Court and Inns

* Tytler, in his Life of Craig, p. 7, says that "the professor of laws, under the title of civilist, in the interval between 1538 and 1553, became one of the constituent professors of the university."

of Chancery for promoting the study of the law and jurisprudence, and securing a sound education to the students."

The commission was granted and gazetted on the 5th of May 1854. It is now engaged in prosecuting inquiries upon the subject, but the result of these has not yet been published. From the statements made, upon which the House of Commons passed the resolution, it appeared that there was no compulsory preparatory education for the English barrister, and that owing to this circumstance, the English bar had somewhat declined in learning—members being contented with merely picking up an available amount of technical knowledge, to the entire neglect of general and scientific legal study. All beyond the knowledge of the practice of the Courts was mere waste of time and money—ornamental it might be, but not necessary for the chief purpose of modern ambition—a livelihood.

There are, however, certain regulations now existing, some of them of a compulsory character, and one of which, in a modified form, the Committee recommend the Faculty to adopt. The following are a selection from them:—

1. "That, for the purpose of affording to the students the means of obtaining instruction and guidance in their legal studies, five readerships or professorships shall be established, which shall consist of the three readerships already established by the societies of the Middle Temple, the Inner Temple, and Gray's Inn,—viz., on jurisprudence and the civil law, the law of real property, and the common law—and also of a reader on equity, to be named by the Society of Lincoln's Inn, and of a readership on constitutional law and legal history, to be founded by the four societies jointly.

2. "That no student shall be eligible to be called to the Bar who shall not either have attended, during one whole year, the lectures of two of the readers, or have satisfactorily passed a public examination.

3. "That public examinations shall be instituted, to be held three times a year, for the examination of all such students as shall be desirous of being examined previously to being called to the Bar; and such examinations shall be conducted by at least two members of the council, jointly with the five readers, and certificates of having honourably passed

such examination shall be given to such students as shall appear to the examiners to be entitled thereto.

4. "That it is expedient that no attorney-at-law, solicitor, Writer to the Signet, or writer of the Scotch courts, proctor, notary-public, clerk in Chancery, parliamentary agent, or agent in any court, original or appellate, clerk to any justice of the peace, or person acting in any of these capacities, and no clerk of, or to any barrister, conveyancer, special pleader, equity draftsman, attorney, solicitor, Writer to the Signet, or writer of the Scotch courts, proctor, notary-public, parliamentary agent, or agent in any court, original or appellate, clerk in Chancery, clerk of the peace, clerk to any justice of the peace, or of, or to, any officer in any court of law or equity, or person acting in the capacity of any such clerks, should be admitted a member of any of the said societies for the purpose of being called to the Bar, or of practising under the Bar, until such person, being on the roll of any court, shall have taken his name off the rolls thereof, nor until he and every other person above named or described shall have entirely and *bona fide* ceased to act or practise in any of the capacities above named or described."

## IV. Bar of Ireland.

The regulations as to the Irish Bar are as follows:—

1. "Every student, not a graduate of the University of Dublin, Oxford, Cambridge, London, or the Queen's University in Ireland, shall keep nine terms commons in the dining-hall of the society, and also eight terms commons in one of the Four Inns of Court, London, and shall lodge with the under treasurer a certificate of having kept said eight terms commons in one of the said Inns of Court in London, on presenting his memorial to be admitted to the degree of barrister-at-law.

2. "Every such student, if a graduate of any of the said universities, is only required to keep six terms commons in the dining-hall of the King's Inns, and also six terms commons in one of the Inns of Court in London.

3. "Every student admitted into the society after the

first day of Trinity term 1850, if a graduate of the University of Dublin, Oxford, Cambridge, London, or the Queen's University in Ireland, shall, as a condition precedent to being called to the bar, produce certificates of his having attended two complete courses *at least* of lectures—viz., one complete course of lectures of any two, at his option, of the four law professors, namely, the law professors of the University of Dublin, and those of the King's Inns, and *at least* five-sixths of the lectures of each session or university term.

4. "Every student admitted into the society after the above date (if not a graduate of one of the said universities), shall, as a condition precedent to being called to the bar, produce certificates of his having attended four courses of lectures—viz., one course of the lectures of each of the said four professors, and *at least* five-sixths of the lectures of each session or university term, in such manner, however, that every such student shall be engaged not less than three years in the study of the law in Ireland, exclusive of the two years necessary for keeping terms in England, in every one of which three years one complete course of lectures must be kept; but this rule, and the preceding one, are not intended to affect the number of terms commons required by the present rules of the society to be kept by students of the King's Inns prior to being called to the bar."

The scheme enacted in these resolutions seems to have failed. A correspondent writes:—The great majority of the students appear to be indifferent to anything beyond the mere attendance—the only thing required to obtain a certificate to qualify them to be called. The causes of this are perhaps various. Some are regardless whether they bring with them to the profession any stock of information, doubtless, observing, that professional distinction is not always the result of professional merit, and that an eminent position may sometimes be arrived at by an easier road than by learning and professional character; others, again, are occupied at the very time with their college studies, which have greater attractions, arising from the emulation which exists among companions, and from the competition for prizes. What is wanting in our schools is some incentive or stimulus to exer-

tion—examinations, prizes, certificates to be given to those only who are duly qualified. A reform is necessary; and a *rigid examination before being allowed to pass.*

## V. Bar of America.

In regard to the Bar of America, communications have been received from various parts of the Union.

Until about 1845, the law in the state of New York recognised degrees of rank at the bar. The attorney was admitted to examination for his license to practise, on proof of a clerkship of seven years with a practising attorney of the Supreme Court, after the age of fourteen. But proof of having been four years engaged in classical studies, such as are pursued in the American colleges, whether in a college or elsewhere, was allowed as equivalent to four years of clerkship. After having a standing of three years as attorney, he was admitted to be examined for the degree of counsellor. The same rules substantially were applicable to solicitors and counsellors in the Courts of Chancery. But counsellors at law were entitled to an examination of course in the Court of Chancery for the degree of solicitor, and after three years the solicitor might proceed to the degree of counsellor in the Court of Chancery on an examination.

But about the year 1845 the whole of this system was, in the state of New York, abrogated. And now any man, producing proof to the Supreme Court of fair moral character, may offer himself for examination, and, if found qualified, be admitted as attorney and counsellor in all the courts. All legal distinctions of professional station have ceased. Nay more, any man, without admission to the bar, may be retained by a party to appear in court for him, and try and argue his cause, and cannot be objected to—a regulation without parallel in any country in which law is administered as a science.

This latitude would be most disastrous to the courts, if a sense of the danger of entrusting the ignorant to meet the learned or the cunning did not, by the operation of instinct, prevent the privilege being resorted to but rarely.

In the other states of the Union, speaking in a general way, an admission to the bar requires nothing but an examination as to sufficiency of learning. No time or particular course of study is called for. The candidate stands upon his examination; for this, any one may present himself on attaining his majority.

In the federal courts, admissions to degrees are made *ad eundem*, upon admissions in the state courts. But the federal courts retain their power of admission on examinations if they choose.

Speaking generally, no attendance at schools, colleges, classes of philosophy, or other specific course of instruction, is required of one seeking admission to the bar. No lectures on law are required to be attended. Only one examination is had, which is on applying for admission to practise, and refers to professional knowledge merely.

There is no distinction in the state of New York between barrister or counsellor and attorney. Nor has any court its own peculiar bar. The same persons are admitted to practise as proctors and advocates in the testamentary courts, and as attorneys and counsellors in the other courts, now administering together both law and equity. This is not only permitted theoretically, but is practised. Every gentleman in full practice occasionally fills each of these offices. The more advanced professional men seldom conduct the technical business of attorney, proctor, or solicitor. But younger men practise in every department, adding conveyancing.

"There never has been," says an eminent member of the New York Bar, "since my memory, or within tradition of the profession since the Revolution, any distinction of exclusiveness between the gentlemen practising in different departments of the profession, even when the ranks were distinctly marked. The same gentlemen who acted as counsellors never felt any hesitation, professionally or socially, at acting if necessary as attorney.

"These remarks, I believe, fully cover your inquiries. But they must seem so strange to one trained up in learned Europe, that I am quite sure you are curious to know how

all this works upon the character of the profession and the public interest. And I will endeavour to satisfy your curiosity.

"Learning, experience, and high character at the Bar, are by clients and the public held in undiminished estimate. No one who can retain men of this description fails to avail himself of these qualifications in all cases of importance. Sometimes, however, the possession of means, family, or other connexions, places business in the hands of unfit men, to the great waste of the time of courts, and discomfort of all parties. The experiment, however, is found to be hazardous and costly, and the waggoner is very often heard praying to Hercules. But there is a lowering of the tone of manners, of the style of speech, and of learned and complete preparation, to a certain extent in progress;—whether from these changes, or from other causes, it is not easy to say. The more common and ordinary business seeks the men of detail, industry, and shrewdness, who act chiefly as attorneys. They are among the best supporters of their more learned brethren. But the courts are not unfrequently impeded in the transaction of their business by the want of skill and knowledge of those who are unrestrictedly allowed to plead before them.

"The law schools, where young men, after taking their degree of Bachelors of Arts in the colleges, resort for lectures on law, are well attended, but are not deemed essential, since a large majority of the bar study in the lawyer's office while acting as his clerks, and to a great extent learn the law by their own practice.

"There is a gradual change for the worse coming over the bar, as a body of gentlemen. Among them learning is not quite as much respected as it was. Practical tact, adroitness, the arts of playing the demagogue before courts and juries, are becoming more available in the waning influence of learning, and want of some degree of legal rank. By the old plan, some learning was insured, some service with superiors; which tended, if not to subordination, yet to a forbearing deference. Some unfit men were shut out. The people and the courts, however, are chiefly the sufferers; the magnates of the profession are not; nor are there wanting sufficient inducements for learning and study.

"Our very democratical condition is the great cause, however, of all this. The law as a profession, on the bench and at the bar, has been the most independent and most powerful body to resist the immediate impulses of popular feeling. It has been a constant course of demagogues to diminish these influences. The salaries to judges are low. The tenure of their office short. They are appointed by elections. And now it is with difficulty that men of independent professional condition can be induced to go on the bench; and it may safely be said that the bench is not above, if equal to, the body of the bar. The result of this is conflicts of decision, and great uncertainty, and an entire absence of submitting to any judgments not rendered by the courts of last resort; and these are acquiesced in, not from authority so much as from necessity. Juries disagree, and judges have small influence to guide them in any matter involving popular feeling.

"These are not pleasant prospects; but every man's own lawsuits cannot be very many, nor can every man have one; and the energy of a prosperous people, with very little government, and left to the instincts of interest and self-preservation, qualify the evils."

## VI. Bar of Paris.

The following communication states so clearly the existing regulations applicable to the French Bar, that it renders unnecessary any further detail. Communications have been received from various sources, but it is presumed the purpose of the Committee will be served by the following information:—

"Je vais repondre aux questions posées dans votre lettre.

"Il serait trop long de vous exposer mes idées personelles sur ce qu'il y a à faire pour l'education et l'instruction des avocats, quoique j'aie beaucoup médité ce sujet; je me borne à vous dire ce qui existe en France.

"De 10 à 18 ans, les jeunes-gens font leurs études classiques; ils étudient le grec, le latin, l'histoire, la géographie, la litterature, les mathematiques, les sciences physiques et

chimiques. Toutes ces études sont constatées par un examen, appelé l'examen de bacchelier-es-lettres. Les jeunes-gens sont obligés d'avoir subi cet examen et d'être reçus baccheliers pour entrer dans le plus grand nombre de carrières. Ces examens sont subis devant une commission des professeurs des hautes écoles de litterature et de science, appelées en France, Facultés des Lettres et Facultés des Sciences. Il y en a un certain nombre de ces facultés dans les principales villes de France. De même qu'il y a neuf écoles de droit ou facultés de droit. Elles sont situées à Paris, à Caen, à Poitiers, à Toulouse, à Aix, à Dijon, à Strasbourg, &c. &c.

" L'étudiant pourvu d'un diplome ou parchemin, constatant qu'il a été reçu bacchelier, se présente à l'école de droit, se fait inscrire comme élève, et suit les différents cours faits par les professeurs. Il renouvelle son inscription au commencement de chaque trimestre ; et sa présence aux leçons peut-être constatée par un appel que fait le professeur. Chaque inscription coûte 18f.

" Au bout des premières inscriptions ou une année, l'élève passe un examen comprenant les deux premiers livres de notre code civil, et une partie des instituts de Justinien.

" Au bout de la deuxième année ou de huit inscriptions, il passe un examen sur une autre partie du code civil, sur les codes de procedure civile et d'instruction criminelle, et sur le code penal. A la suite de ces deux examens il obtient le titre et le diplome de bachelier en droit. Après la dixième inscription, il y a un nouvel examen qui comprend toutes les instituts de Justinien et une partie du digeste, celle que le professeur des Pandectes a expliquée l'année précédente. Au bout de la 12me inscription ou après trois ans d'études, l'élève passe un examen sur *tout* le code civil, le code de commerce, et le droit administratif.

" Il fait une thèse, un écrit ; il y professe ses opinions et est appelé à les soutenir devant une commission de professeurs, lesquels argumentent contre le candidat. A la suite de ces examens l'élève reçoit un diplome *de licencié en droit*. Une fois licencié on peut être avocat. Seulement l'on prête un serment solemnel devant la cour d'appel de bien remplir ses devoirs d'avocat.

Puis l'avocat s'adresse au bâtonnier de l'ordre des avocats, par une demande écrite, pour obtenir son inscription au *stage*.

Le batonnier soumet la demande au conseil de discipline. Un membre est nommé pour faire le rapport sur cette demande. Ce rapporteur va visiter le jeune candidat; il examine s'il est bien logé, bien meublé; il s'enquiert de sa conduite. Et sur son rapport le conseil de discipline admet ou rejette la demande. Sa decision est souveraine et inattaquable. Tout se passe secretement.

Si le jeune avocat est admis au *stage*, il doit pendant trois ans suivre les audiences, écouter les plaidoiries, assister à des conferences que le batonnier est autorisé à faire. Bref, on veut qu'il apprenne son état. Cela ne l'empèche pas de plaider toutes les causes qu'on pourrait lui confier; il y a eu des avocats *stagiaires* qui ont eu de brillants succès et qui ont battu les anciens. Le *stage* n'est pas un obstacle, c'est une initiation; tant mieux pour ceux qui n'en ont pas besoin.

Après trois ans de *stage*, l'avocat obtient *son inscription sur le tableau des avocats*. Mais il faut encore pour cela une décision du conseil de discipline, dont les membres sont élus chaque année par les avocats inscrits au tableau. Une fois inscrit sur le *tableau de l'ordre des avocats* près la cour . . . ., l'avocat jouit de toute son independance. Mais il est toujours sous la surveillance du conseil de discipline, qui a qualité pour punir tous actes contraires à la dignité du Barreau. Lisez Mollot sur ces points. Vous voyez qu'il suffit du grade de licencié en droit pour devenir avocat.

Mais il y en a beaucoup qui au lieu de trois ans, restent quatre ans à l'école de droit, et peuvent ainsi obtenir, au moyen de nouveaux examens, le titre de *docteur en droit*. Mais se titre n'est nécessaire qu' à ceux qui veulent devenir professeurs dans les facultés.

Tous les examens sont fort sevères et à Paris il y a presque toujours la moitié de refusés la premiere fois. Ceux qui ont été refusés, ne peuvent pas se representir à un nouvel examen avant un delai de trois mois.

Il y a encore un autre titre qu'on peut obtenir aux écoles de droit appelé *certificat de capacité;* mais je ne vous en parle pas, car il ne regarde pas les avocats; c'est peu de chose; il ne concerne que les avoués.

Cette discipline sous la quelle nous vivons fait notre force et notre dignité. Il est impossible qu'un coquin reste avocat, car on le chasse; on exclut même souvent pour peu de chose.

A Paris si la discipline est exagérée elle n'en est pas moins paternelle, et il n'y a pas d'exemple d'une injustice commise.

A moins de circonstances très graves, c'est toujours parmi les avocats stagiaires que les Presidents des Assises choisissent les avocats d'office.

Il n'y a que les avocats inscrits au tableau de l'ordre, et ceux inscrits au tableau des stagiaires, qui aient le droit de plaider devant les cours et tribunaux.

The remainder of this letter contains opinions in which the Committee cannot concur. They refer to a question which has been little stirred in Scotland.

L'opinion, qui voudrait faire de la profession d'avocat un état completement libre, est en minorité en France. Cet état de choses a existé durant notre première revolution, mais n'a pas donné de bons résultats. Sans nul doute, vous devez completement renoncer à l'intermediaire des attorneys; c'est une honte pour le barreau d'être surbordonné aux attorneys; vous devez voir les clients vous-mêmes. C'est ainsi seulement qu'une entière confiance peut exister entre le client et l'avocat. L'attorney doit être le serviteur des avocats. Chez nous il n'y a guère que les avocats stagiaires qui sont sous la dépendance des avoués. Les clients ont le plus grand interet à s'addresser aux avocats *d'abord*. Car ceux-ci donneront de bons conseils; ils n'aimeront pas venir devant les cours soutenir des choses non soutenables. Il y va de leur honneur.

Tandis que les avoués commencent par faire de la procedure; ils veulent gagner de l'argent. Peu leur importe le gain du procès; ils veulent faire des actes, dont en definitive les avocats endorsent la responsibilité devant les tribunaux.

Quant à vos craintes que des avocats se mettent à la solde d'agents d'affaires, qui remplaceront les avoués, je ne m'y arrete pas, car le conseil de discipline fait bonne justice de toutes ces fautes.

Je crois avoir repondu a toutes vos questions, et me mets à votre disposition pour repondre à d'autres.

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The above interesting communication may be supplemented by the following programme of lectures delivered at the University of Paris, which brings with more precision to the mind the thorough training which a French lawyer receives.

# PROGRAMME DES COURS DE LA FACULTE DE DROIT DE PARIS.

## 1er Semestre.

(Les Cours commenceront le Lundi 7 Novembre 1858.)

### COURS DE PREMIERE ANNEE.

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| Droit romain. | M. Pellat, Professeur, | Mardi, Jeudi, Samedi, | a 11 heures. |
| | M. Giraud, Professeur, | Les memes jours, | a 9 heures et ½. |
| Code Napoleon. | M. Demante, Professeur, | Lundi, Mercredi, Vendredi, | a 9 heures et ½. |
| | M. Oudot, Professeur, | Les memes jours, | a 11 heures et ½. |
| Introduction generale a l'Etude du Droit. | M. de Portets, Professeur, | Les memes jours, | a 1 heure. |

### COURS DE DEUXIEME ANNEE.

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|---|---|---|---|
| Droit romain. | M. Blondeau, Professeur, | Lundi, Mercredi, Vendredi, | a 2 heures et ½. |
| | M. Machelard, Professeur, | Les memes jours, | a 1 heure. |
| Code Napoleon. | M. Bugnet, Professeur, | Les memes jours, | a 8 heures. |
| | M. Valette, Professeur, | Les memes jours, | a 11 heures et ½. |
| Legislation criminelle et Procedure civile et criminelle. | M. Bonnier, Professeur, | Mardi, Jeudi, Samedi, | a 11 heures. |
| Droit criminel et Legislation penale comparee. | M. Ortolan, Professeur, | Les memes jours, | a 8 heures. |
| Procedure civile. | M. Colmet-Daage, Professeur, | Les memes jours, | a 9 heures ½. |

### COURS DE TROISIEME ANNEE.

| | | | |
|---|---|---|---|
| Code Napoleon. | M. Duranton, Professeur, | Lundi, Mercredi, Vendredi, | a 10 heures. |
| | M. Perreyve, Professeur, | Les memes jours, | a 8 heures et ½. |
| Code de commerce. | M. Bravard, Professeur, | Mardi, Jeudi, Samedi, | a midi et ½. |
| Droit administratif. | M. Vuatrin, Professeur, | Les memes jours, | a 2 heures. |

### COURS DE QUATRIEME ANNEE.

| | | | |
|---|---|---|---|
| Droit des gens. | M. Royer-Collard, Professeur, | Mardi, Jeudi, Samedi, | a 8 heures et ½. |
| Histoire du droit romain et du droit français. | M. de Valroger, Professeur. | Les memes jours, | a midi et ½. |
| Conferences sur les Pandectes, sous la direction d'un Professr. de droit romain, | | Mardi, | a 2 heures. |

From this programme it will be seen that four years are devoted to a Frenchman's legal education—that he has the benefit of the instruction of eighteen law professors, and that he is taught eight different branches of jurisprudence which are entirely omitted in our university education. The effect of this systematic and elaborate study is seen in the fact, that the French are at the present time the most learned and exact jurists in the world.

## VII. Bar of Germany.

The law in Prussia is the most popular of the professions. Most of the Government situations are occupied by lawyers, who, before they can attain the rank of advocate, must have passed through a formidable curriculum both in general learning and in law.

Before being allowed to enter a university, a student of law must have passed a severe examination on classical and philosophical subjects; and which in general requires an education at the gymnasia or grammar schools of five or six years. The study of the law in Germany is twofold, either scientific or practical. In the first case, the student acquires the title of Doctor of Laws, the principal object of which is to enable him to attach himself to a university as a teacher. In the second case, he acquires the title of Referendarius, or Assessor, and becomes entitled to carry on general practice. His studies are accommodated to the ultimate object he has in view. Those which are common to both are as follows:—

On entering the university (say that of Berlin), the student begins directly by hearing lectures on law; but he must attend, at the same time, a few lectures on general science, which are left to his own choice. He must study at least three years before he is allowed to pass his first examination, for which he has an opportunity of preparing himself by selecting from the following list such courses as are imposed each year by the Minister of Public Instruction:—

# BERLIN UNIVERSITY.

## ORDINIS IVRIDICI.

### 1. *Professorum Ordinariorum.*

C. G. DE LANCIZOLLE, Dr. Dec.

I. Publice ordinum provincialium in Germaniæ territoriis historiam atque indolem exponet d. Merc. h. VIII-IX.

II. Privatim historiam imperii et iuris Germanici tradet quater h. VIII-IX.

A. W. HEFFTER, Dr.

I. Publice processum iuris civilis in causis summariis, executionis et cridæ s. concursus creditorum d. Merc. h. VIII-IX.

II. Privatim 1) Ordinem iudiciorum privatorum secundum leges Borussiæ et ius Germaniæ olim commune ad libr. suum: System des röm. u. deutsch. Civilproc. d. Iov. et Ven. h. VII-IX. 2) Ius publicum civitatium Germaniæ cum iure Principum d. Lun. et Mart. h. VII-IX. 3) Ius gentium d. Merc. h. VII-VIII. et d. Sat. h. VII-IX. explicabit.

L. E. HEYDEMANN, Dr.

I. Publice iura familiæ et iura successionum Borussica, Marchica, Francogallica methodo comparativa exponet d. Mart. h. XII-I½.

II. Privatim 1) Encyclopædiam et methodologiam iuris, in supplementum adhibiturus Putteri librum "Der Inbegriff der Rechtswissenschaft cet. Berlin 1846," d. Lun. Iov. Ven. h. XII-I. 2) Ius naturæ et philosophiam iuris d. Merc. et Sat. h. XI-I. 3) Ius Borussicum civile d. Lun. Mart. Iov. Ven. h. XI-XII. ad lineamenta sua a. 1851 edita docebit.

C. G. HOMEYER, Dr.

I. Publice ius cambiale d. Merc. h. X-XI.

II. Privatim ius Germanicum privatum cum iure feudali et commerciorum duce Krautio d. Mart. Iov. Ven. Sat. h. IX-XI. d. Merc. h. IX-X. docebit.

F. L. KELLER, Dr.

I. Publice de ordine iudiciorum privatorum apud Romanos e libello suo (Der Römische Civil-Process und die Actionen) disseret d. Merc. et Sat. h. III-IV.

II. Privatim 1) Historiam iuris Romani, comprehenso vetere tam iure quam ordine iudiciorum publicorum d. Mart. Merc. Iov. Ven. h. IX-X. 2) Institutiones et antiquitates iuris Romani quotidie h. X-XI. 3) Processum civilem communem Germaniæ adhibitis Borrussiæ aliarumque civitatum tam Germanicarum quam exterarum legibus d. Lun. Mart. Iov. Ven. h. III-IV. 4) Encyclopædiam et Methodologiam iuris d. Lun. Merc. Ven. h. VIII-IX. ad sua quæque lineamenta exponet.

III. Privatissime societatem exegeticis et practicis exercitationibus habendis instituet d. Sat. h. VI-VIII. vesp.

AEM. L. RICHTER, Dr.

I. Privatim ius ecclesiæ evangelicæ, quod per Borrussiam obtinet, theologiæ et iuris studiosis tradet d. Mart. Merc. Ven. h. VIII-IX.

II. Privatissime et gratis selecta corporis iuris canonici capita interpretenda et graviores casus ex eodem iure diiudicandos proponet d. Sat. h. VIII-IX.

A. A. F. RVDORFF, Dr.

I. Publice ius familiæ exponet d. Ven. h. XII-I.

II. Privatim 1) Pandectas ad lineamenta sua, respiciens Puchtæ pandectarum editionem sextam a se curatam, sexies h. IX-XI. 2) Ius hereditarium d. Lun. Mart. et Iov. h. XII-I. docebit.

III. Privatissime practicum Pandectarum instituet d. Merc. h. VII-VIII. vesp.

F. I. STAHL, Dr.

I. Publice ius matrimoniale d. Merc. h. IV-V.

II. Privatim 1) Ius naturæ seu philosophiam iuris quater h. XI-XII. 2) Ius ecclesiasticum tam catholicorum quam evangelicorum quater h. IV-V. docebit.

2. *Academiæ regiæ litter. sodalis.*

H. E. DIRKSEN, Dr.

I. Publice titulum Pandectarum "de origine iuris" interpretabitur d. Merc. et Sat. h. VIII-IX.

II. Privatim 1) Historiam iuris Romani quater h. VIII-IX. 2) Institutiones et antiquitates iuris Romani sexies h. IX-X. exponet.

3. *Professorum extraordinariorum.*

A. F. BERNER, Dr. Prof. des.

I. Publice codicem processus criminalis Francogallorum (Code d'instruction criminelle) interpretabitur d. Merc. h. X-XII.

II. Privatim 1) Ius criminale quater h. V-VI. 2) Processum criminalem quater h. X-XI. 3) Ius gentium d. Merc. h. V-VI., d. Sat. h. IV-VI. docebit.

ALEX. A DANIELS, Dr. Prof. des.

I. Publice 1) Ius saxonicum municipale, præmissa historia fontium iuris germanici medii ævi, interpretabitur d. Lun. h. IV-V. 2) Ius metallicum docebit d. Merc. h. VI-VII. vesp.

II. Privatim 1) Ius feudale tradet d. Iov. Ven. Sat. h. V-VI. 2) Ius Borussicum privatum docebit d. Lun. h. V-VII., d. Mart. Merc. h. V-VI. 3) Processum civilem francogallicum interpretabitur d. Mart. Iov. Ven. Sat. h. VI-VII.

H. R. A. F. GNEIST, Dr. Prof. des.

I. Publice ius publicum et ordinem iudiciorum Francogallicum tractabit d. Sat. h. IV-VI.

II. Privatim 1) Institutiones et antiquitates iuris Romani adiectis excercitationibus exegeticis quotidie h. X-XI. 2) Historiam

iuris Romani comprehenso ordine iudiciorum d. Lun. Mart. Iov. Ven. h. IX-X. 3) Ius criminale quater h. XI-XII. 4) Processum criminalem d. Merc. et. Sat. h. XI-I. exponet.

C. L. B. DE RICHTHOFEN, Dr. Prof. des.

I. Publice ius commerciorum, quod in Germania obtinet, iure cambiali excepto, d. Merc. et. Sat. h. XI-XII. tradet.

II. Privatim historiam imperii et iuris Germanici d. Lun. Mart. Iov. Ven. h. XII-1. exponet.

4. *Privatim docentium.*

I. A. COLLMANN, Dr.

Privatim 1) Historiam imperii et iuris Germanici d. Lun. Mart. Iov. Ven. h. XI-XII. enarrabit. 2) Ius feudale d. Merc. h. VIII-IX. et d. Sat. h. VIII-X. docebit. 3) Ius publicum tam universale quam germanicum d. Lun. Mart. Iov. Ven. h. XII-I. tradet. 4) Ius gentium d. Merc. h. IX-XI. et d. Sat. h. X-XI. exponet.

I. KOHLSTOCK, Dr.

Repetitoria et examinatoria offert.

E. SCHMIDT, Dr.

I. Gratis collegium quod vocant practicum Pandectarum sive exercitationes in causis, quæ ad gravissimas iuris civilis communis quæstiones pertinent, diiudicandis d. Sat. h. XII-II. moderabitur.

II. Privatim Pandectarum et iuris privati Romani antiquitatum repetitorium et examinatorium instituet d. Lun. Mart. Iov. Ven. h. IV-VI.

III. Privatissime omnium iuris partium examinatoria et repetitoria petentibus offert.

There are thus no less than sixteen professors of law at Berlin, in whose classes a law student acquires a knowledge, not merely of Prussian jurisprudence, but a varied acquaintance with the laws and institutions of other nations.

## HEIDELBERG UNIVERSITY.

At HEIDELBERG, the following classes were taught during the winter session 1852-3.

1. Juristische Encyclopädie und Methodologie: nach eigenem Plane: Geh. Hofrath Rosshirt, Montag und Dienstag von 8 bis 9 Uhr.

1. Encyclopædia and Methodology of Jurisprudence,* according to his own method; by Privy Counsellor Rosshirt; Monday and Tuesday, from 8 to 9.

* In this class the relations of the different branches of law to each other, natural law, international law, public and private, common and statute, written and unwritten, civil and criminal law; and also of the different systems, the Roman canon, &c., to the laws of the country are explained. It is a most useful class, with which the study of the law in Germany invariably commences.

2. Encyclopädie und Methodologie des Rechts: Dr. Pagenstecher, Montag und Mittwoch von 5—6 Uhr Abends.

2. The same; by Dr. Pagenstecher; Monday and Wednesday, from 5 to 6 evening.

3. Naturrecht (Rechtsphilosophie), nach eigenem Plane: Hofrath Zöpfl, 4mal wöchentlich (Mittwoch bis Samstag) von 8 bis 9 Uhr Morgens.

3. The Law of Nature (philosophy of law), according to his own method; by Counsellor Zöpfl; 4 times a week, from 8 to 9 in the morning.

4. Rechtsphilosophie (Naturrecht), nach seinem Lehrbuch (Grundzüge des Naturrechts, Heidelberg bei C. F. Winter 1846): Prof. Roeder, Montag bis Donnerstag von 3—4 Uhr.

4. Philosophy of Law (natural law), according to his text-book, &c.; by Prof. Roeder; Monday till Thursday, from 3 to 4.

5. Naturrecht (Rechtsphilosophie) mit Hinweisungen auf positives Recht, zu dessen philosophischer Begründung und Erklärung: Prof. Sachsse, 4mal wöchentlich von 4—5 Uhr.

5. The same, with reference to positive law, and its philosophical foundation and exposition; Prof. Sachsse; 4 times a week, from 4 to 5.

6. Rechtsphilosophie: Dr. Knapp, 3mal wöchentlich.

6. The same; Dr. Knapp; 3 times a week.

7. Geschichte der Rechtsphilosophie: Derselbe, 1mal wöchentlich, öffentlich.

7. History of the Philosophy of Law; by the same; once a week, public.

8. Institutionen und äussere Geschichte des römischen Rechts mit Hinweisung auf Marezoll: Geh. Hofrath Rosshirt, täglich von 11—12 Uhr.

8. The Institutes and External History of the Roman Law, with reference to Marezoll; Privy Coun. Rosshirt; daily, from 11 to 12.

9. Aeussere Geschichte und Institutionen des römischen Rechts mit Hinweisung auf Marezoll: Dr. Kleinschrod, täglich von 11—12 Uhr.

9. The same; Dr. Kleinschrod; daily, from 11 to 12.

10. Institutionen und Geschichte des römischen Rechts: Dr. Pagenstecher täglich von 11—12 Uhr.

10. The Institutes and History of the Roman Law; Dr. Pagenstecher; daily, 11 to 12.

11. Institutionen des römischen Rechts und äussere Rechtsgeschichte: Dr. **Dernburg**, täglich von 11—12 Uhr.

11. Institutes of the Roman Law and Foreign Legal History; daily 11—12.

12. Institutionen und Rechtsgeschichte: Dr. **Stintzing**, täglich von 11—12 Uhr.

12. Institutes and History of Law; Dr. Stintzing; daily, 11 to 12.

13. Das Staatsrecht der römischen Republik: Dr. **Pagenstecher**, Freitag Abends von 5—6 Uhr, öffentlich.

13. The Constitutional Law of the Roman Republic; Dr. Pagenstecher; Friday evenings, 5 to 6, public.

14. Pandekten, mit Einschluss des Erbrechts, nach seinem Lehrbuch: Geh. Rath v. **Vangerow**, täglich von 9—11 Uhr und von 12—1 Uhr.

14. Pandects, including the Law of Succession, following his text-book; Privy Coun. Von Vangerow; daily from 9 to 11, and from 12 to 1.

15. Repetitorium der Pandekten, dabei kurze Uebersicht der Controversen nach Dictaten: Geh. Hofrath **Rosshirt**, 2mal von 5—6 Uhr, und in einer dritten noch zu bestimmenden Stunde.

15. Repetition of the Pandects, &c.; Priv. Coun. Rosshirt; twice a week, from 5 to 6, &c.

16. Repetitorium und Prakticum der Pandekten: Dr. **Pagenstecher**, 3mal wöchentlich.

16. Repetition and Practical Exercises from the Pandects; Dr. Pagenstecher; 3 times a week.

17. Recapitulation der Hauptgrundsätze des römischen Pandektenrechts, in Anschluss an die Pandekten-Vorlesung: Dr. **Dernburg**, 2mal wöchentlich, öffentlich.

17. Recapitulation of the leading principles of the Roman Law, as contained in the Pandects, in connection with the Lectures on the Pandects; Dr. Dernburg; twice a week, public.

18. Erklärung der Titel über das Pfandrecht im 20 Buch der Digesten, mit einer Einleitung in das römische Pfandrecht: Derselbe, 2mal wöchentlich, öffentlich.

18. Exposition of the Title, *de pignoribus*, in the 20th book of the digest, with an introduction to the Roman law of Pledge; by the same; twice a week, public.

19. Exegetische Uebungen Dr. **Stintzing**, 2mal wöchentlich, öffentlich.

19. Exegetic Exercises; Dr. Stintzing; twice a week, public.

20. Deutsche Staats- und Rechtsgeschichte nach seinem Lehrbuche Hofrath Zoepfl, täglich von 3—4 Uhr.

20. German Constitutional Law, and History of Law, according to his text-book; Counsellor Zoepfl; daily, 3 to 4.

21. Deutsche Staats- und Rechtsgeschichte: Dr. Jolly, täglich von 3—4 Uhr.

21. The same; Dr. Jolly; daily, 3 to 4.

22. Völkerrecht: Prof. Roeder, Freitag und Samstag von 3 bis 4 Uhr.

22. International Law; Prof. Roeder; Friday and Saturday, 3 to 4.

23. Völkerrecht nach Heffter: Dr. Marquardsen, 2mal wöchentlich.

23. The same, according to Heffter; Dr. Marquardsen; twice a week.

24. Politik: Geh. Hofrath v. Mohl, 5mal wöchentlich von 6 bis 7 Uhr.

24. Politics; Priv. Coun. Von Mohl; 5 times a week, from 6 to 7.

25. Allgemeines Staatsrecht, mit besonderer Berücksichtigung der repräsentativen Monarchie und Democratie: Derselbe, in den ersten 5 Wochentagen von 4—5 Uhr.

25. General Constitutional Law, with particular reference to representative monarchy and democracy; the same, in the first five days of the week, 4 to 5.

26. Deutsches Staatsrecht, nach seinem Lehrbuch: Hofrath Zoepfl, 5mal von 4—5 Uhr.

26. German Constitutional Law, according to his text-book; Coun. Zoepfl; 5 times, 4 to 5.

27. Allgemeines und Deutsches Staatsrecht: Dr. Marquardsen, 5mal wöchentlich.

27. Universal and German Constitl. Law; Dr. Marquardsen; 5 times a week.

28. Das Staatsrecht von England: Derselbe, 1mal wöchentlich, öffentlich.

28. Constitutional Law of England; by the same; once a week, publicly.

29. Deutsches Privatrecht, mit Einschluss des Lehnsinstituts und mit Ausschluss des s. g. engeren Handelsrechts, nach eigenem Plane und mit Hinweisung auf die Lehrbücher von Eichhorn und Mittermaier: Prof. Brackenhoeft, täglich von 8—9 Uhr.

29. German Private Law, including Feudal Law, &c., with reference to the text-books of Eichhorn and Mittermaier; Prof. Brackenhoeft; daily, 8 to 9.

30. Deutsches Privatrecht, mit Einschluss des Handels- und Wechselrechts (s. unten die besonderen Anzeigen derselben): Dr. Brinckmann, täglich von 4—5 Uhr.

30. German Private Law; Dr. Brinckmann; daily, 4 to 5.

31. Deutsches Privatrecht, mit Einschluss des Handelsrechts, nach Kraut's Grundriss zu Vorlesungen über das deutsche Privatrecht: Dr. Jolly, täglich von 11—12 Uhr.

31. The same, including Mercantile Law, after Kraut, &c.; 11 to 12.

32. Das Eherecht nach seiner Ausbildung im deutschen Rechte und in den neuen Gesetzgebungen: Geh. Rath Mittermaier, öffentlich einmal wöchentlich.

32. Law of Marriage, &c.; Privy Coun. Mittermaier; public, once a week.

33. Engeres Handelsrecht mit Hinweisung auf die Lehrbücher von Mittermaier (deutsches Privatrecht) und Thöl (Handelsrecht, Bd. 1): Prof. Brackenhoeft, wöchentlich, 1mal.

33. Stricter Commercial Law, &c.; Prof. Brackenhoeft; once a week.

34. Das Handelsrecht, nach seinem Lehrbuche desselben Dr. Brinckmann, einmal wöchentlich von 4—5 Uhr.

34. Commercial Law, according to his text-book; once a week, 4 to 5.

35. Wechsellehre und Wechselrecht, nach der deutschen Wechselordnung und dem Code de Commerce: Dr. Brinckmann, einmal wöchentlich von 4—5 Uhr.

35. Law of Bills of Exchange, according to the German regulations, and the *Code de Commerce;* Dr. Brinckmann; once a week, 4 to 5.

36. Deutsches Wechselrecht: Dr. Colly, Frietag von 5—6 Uhr, öffentlich.

36. German Law of Bills of Exchange; Dr. Jolly; Friday, 5 to 6, public.

37. Lehnrecht, nach eigenem Grundrisse: Hofrath Zoepfl, Montag und Dienstag von 8—9 Uhr.

37. The Feudal Law, according to his own compendium; 8 to 9; Coun. Zoepfl.

38. Lehnrecht: Prof. Sachsse, 2mal wöchentlich von 4—5 Uhr.

38. The Feudal Law; Professor Sachsse; twice a week, 4 to 5.

39. Kirchenrecht der Katholiken und Protestanten mit einer Encyclopädie des Inhalts des corpus juris canonici: Geh. Hofrath Rosshirt, nach seinem Lehrbuch, 4mal wöchentlich von 6 bis 7 Uhr.

39. Ecclesiastical Law of Catholics and Protestants, with an Encyclopædia of the contents of the Corpus Juris Canonici; Priv. Coun. Rosshirt, according to his text-book; 6 to 7.

40. Kirchenrecht der Katholiken und Protestanten: Prof. Sachsse, 4mal wöchentlich von 6—7 Uhr.

40. The same; Prof. Sachsse; 4 times a week; 6 to 7.

41. Französisches und badisches Civilrecht: Prof. Renaud, täglich von 10—11 Uhr, und in zwei noch zu bestimmenden weiteren Stunden.

41. French and Baden Civil Law; Prof Renaud; daily, 10 to 11.

42. Criminalrecht mit Bezug auf Feuerbachs Lehrbuch und steter Rücksicht auf die Forderungen der Strafrechtsphilosophie und Criminalpolitik: Prof. Roeder, 6mal wöchentlich von 11 bis 12 Uhr.

42. Criminal Law, with reference to Feuerbach's text-book, and to the philosophical principles of punishment, and criminal politics; Prof. Roeder; 6 times a week, 11 to 12.

43. Criminalrecht, nach eigenem Grundriss (vorräthig in der academ. Anstalt für Literatur und Kunst): Dr. Marquardsen, 6mal wöchentlich.

43. The same; Dr. Marquardsen; 6 times a week.

44. Strafprocess, deutscher, nach seiner bisherigen Ausbildung und Darstellung des mündlichen öffentlichen schwurgerichtlichen Strafverfahrens nach der englischen, französischen und neuern deutschen Gesetzgebung, nach seinem Werke: das Strafverfahren 4 Aufl.: Geh. Rath Mittermaier, 4mal von 5—6 Uhr an den ersten 4 Wochentagen.

44. German Criminal Process, &c.; Priv. Coun. Mittermaier.

45. Die Schwurgerichte, nach ihrer geschichtlichen Ausbildung und Wirksamkeit in England, Frankreich, und Deutschland: Geh. Rath Mittermaier, Freitag von 5—6 Uhr, öffentlich.

45. Jury Trial, its historical developt. and efficiency in England, France, and Germany. The same; public, 5 to 6.

46. Criminalpraktikum, Anleitung zur Vertheidigung, zum Referiren und allen Arten der Vorträge im Strafverfahren, mit Uebungen in schriftlichen und mündlichen Vorträgen, mit Durchführung merkwürdiger Straffälle, nach seiner Anleitung zur Vertheidigungs-Kunst; Derselbe, 3mal wöchentlich von 3—4 Uhr.

46. Criminal Practical Exercises, &c. The same, 3 to 4.

47. Gerichtliche Medecin: cf. pg. 9.

47. Medical Jurisprudence, (see Medicine) p. 9.

48. Gerichtliche Medecin, mit Uebungen auf der Anatomie: Dr. Knapp, 3mal wöchentlich.

48. Medical Jurisprudence, with anatomical demonstrations; Dr. Knapp; 3 times a week.

49. Gemeines deutsches Civilprocessrecht: Prof. Renaud, täglich von 8—9 Uhr.

49. Ordinary German Civil Process; Prof. Renaud; daily, 8 to 9.

50. Gemeiner deutscher Civilproceß nach eigenem Plane unter theilweiser Beziehung auf das Lehrbuch von Linde: Dr. Brinckmann, täglich von 9—10 Uhr.

50. Ordinary German Civil Process; with partial reference to Linde's text-book; Dr. Brinckmann; daily, 9 to 10.

51. Civilproceß unter Hinweisung auf das Lehrbuch von Linde: Dr. Kleinschrod, täglich von 10—11 Uhr.

51. The same; Dr. Kleinschrod, 10 to 11.

52. Deutsches Gerichtswesen: Derselbe, wöchentlich 2mal von 9—10 Uhr, öffentlich.

52. Constitution of German Courts of Law. The same; 9 to 10, public.

53. Civilprocesspracticum nebst Anleitung zur civilgerichtlichen Praxis: Dr. Brinckmann, 4mal wöchentlich von 5—6 Uhr.

53. The Practice of Civil Procedure, &c.; Dr. Brinckmann; 4 times a week.

## Zu Privatissimis und Examinatoria erbieten sich:

*The following offer themselves for examinations and private lessons—*

Prof. Röder: über römisches Recht, Criminalrecht und andere Hauptzweige der Rechtswissenschaft.

Prof. Roeder; on Roman Law, Criminal Law, and other principal branches of the Law.

Prof. Sachsse: über römisches und deutsches Privatrecht und beliebige Rechtstheile.

Prof. Sachsse; on Roman and German Private Law, and other departments.

Prof. Brackenhoeft: über Pandekten, Civilproceß und deutsches Privatrecht.

Prof. Brackenhoeft; Pandects, Civil Process, and German Private Law.

Dr. Jolly: über deutsches, französisches und römisches Recht.
Dr. Jolly; German, French, and Roman Law.

Dr. Kleinschrod: über alle Rechtstheile.
Dr. Kleinschrod; on all departments of Law.

Dr. Pagenstecher: über alle Rechtstheile, insbesondere über römisches Recht, gemeinen Civilproceß und preussisches Landrecht.
Dr. Pagenstecher; on all departments; particularly on Roman Law, Common Civil Process, and Prussian Law.

Dr. Dernburg: über Pandekten und Civilproceß.
Dr. Dernburg; on Pandects and Civil Procedure.

Dr. Stintzing: über Pandekten und Civilproceß.
Dr. Stintzing; on Pandects and Civil Procedure.

The examination of Doctor of Laws is held entirely at the university, but that of lawyers out of it by men named by the State, who are partly professors of the university or practitioners. After having passed this examination, the party becomes *referendarius*, and enters directly into the practice of the courts.

Then follows the last examination, which is at once scientific and practical. If he pass it, he becomes assessor, and is entitled to an appointment by Government, and to commence private practice in any place to which Government may relegate him.

The course of education is so strict, and the difficulties in the way of a party becoming an advocate (or assessor) so great, that few attain the position until they are somewhat advanced in life.

## VIII. Bar of Italy.

Law schools exist in Italy, and although from the unhappy character of the despotic governments of that country, the profession is deprived of its dignity and independence, yet we find there the recognition of the necessity of compulsory and systematic training.

At Bologna the following is the curriculum:—

1. Instit. Juris Nat. ac Gentium—Rainaldus Bajetti.
2. Instit. Juris Civilis—Aloisius Giusti.
3. Textus Canonicus—Vincentius Todeschi.

4. Textus Civilis—Bernardus Gasparini.
5. Inst. Juris Canonici—Franciscus Cesari.
6. Textus Civilis—Clemens Giovanardi.
7. Inst. Juris Criminalis—Raphael Rapetti.
8. Juris Natur. et Gent.—*Professor Adjutor cum jure successionis* —Vincentius Ferranti.
9. Textus Civilis—*Professor Adjutor cum jure successionis*—Joseph Ceneri.
10. Inst. Jur. Pub. Ecclesiastici— . . . . . .

At PADUA the following is the curriculum :—

STUDIO POLITICO-LEGALE.

POLITICO—LEGAL DEPARTMENT.

DIRETTORE.

1. Sig. Alessandro dott. Racchetti (sopraddetto fra i Direttori).

DIRECTOR.

1. Dr. Alexander Rachetti (mentioned above among the directors).

PROFESSORI.

2. Sig. dott. Alessandro Racchetti (sopraddetto fra i Direttori), Professore ordinario di Procedura giudiziaria e notarile, e di stile degli affari.

PROFESSORS.

2. Dr. Alexander Rachetti (mentioned above among the directors) Ordinary Professor of Judicial and Notarial Procedure, and of the mode of conducting suits.

3. Dott. nob. Giovanni Cicogna, Professore ordinario di Diritto Civile generale austriaco confrontato col Codice Civile francese, e Supplente ai Trattati Legali pegli Ingegneri, Architetti e Periti agrimensori.

3. The Noble Dr. Giovanni Cicogna, Ordinary Professor of Austrian Common Civil Law, compared with the French Civil Law, and supplying the legal treatises for engineers, architects, and skilful land-surveyors.

4. Dott. Antonio Valsecchi, Professore ordinario di Diritto Romano, Statutario e Feudale.

4. Dr. Antonio Valsecchi, Ordinary Professor of Roman, Statute, and Feudal Law.

. Ab. dott. nob. Francesco Nardi, Professore ordinario di Diritto Canonico e Supplente alla Cattedra di Statistica.

5. The Noble Dr. Francesco Nardi, Ordinary Professor of Canon Law, and supplying also the Chair of Statistics.

6. Dott. Gio. Paolo Tolomei, Professore ordinario d'Introduzione Enciclopedica allo studio Politico-Legale, di Diritto naturale, privato, publico, e di Diritto criminale.

6. Dr. Geo. Paolo Tolomei, Ordinary Professor of the Encyclopædical Introduction to the study of Political Law; of Natural, Private, and Public Law; and of Criminal Law.

7. Dott. Barnaba Vincenzo Zambelli, Prof. Ordinario di Diritto mercantile e Supplente alla Cattedra delle Scienze e Leggi politiche.

7. Dr. Barnaba Vincenzo Zambelli, Ordinary Professor of Commercial Law, and supplying also the Chair of Political Sciences and Laws.

8. Dott. Antonio Tonzig, Prof. Ordinario della Scienza di Contabilità di Stato (sopraddetto fra i Decani).

8. Dr. Antonio Tonzig, Ordinary Professor of the Science of the Responsibility of the State (mentioned above among the Deans).

9. Dott. Dalluscheck Giuseppe Antonio, Professore supplente di Diritto mercantile austriaco sulle basi delle Scienze del commercio, della Legislazione austriaca sui Cambi, sul Diritto mercantile di navigazione e delle Leggi finanziarie.

9. Dr. Dalluscheck Giuseppe Antonio, Temporary Professor of Austrian Mercantile Law, on the basis of the science of commerce; of Austrian Legislation on Bills of Exchange; of the Commercial Law of Navigation; and of the Financial Laws.

ASSISTENTE.

10. Dott. Iginio Alessio, alle Cattedre di Diritto naturale privato, publico, e di Diritto criminale, di Statistica e Scienze politiche.

ASSISTANT.

10. Dr. Iginio Alessio, to the Chairs of Natural, Private, and Public Law, and of Criminal Law, of Statistics, and of Political Science.

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Thus it appears that even in Italy the law student is furnished with the means of study in the class-rooms of eight different law professors.

## IX. Recommendations of the Committee.

Having now given an abridgement of the materials which they have collected, the Committee proceed to state the practical result of their deliberations; and they do so under the conviction that, looking to the source from which the Supreme Judges are taken, the subject is one of national interest and importance.

### 1. *General Education.*

Upon this all-important matter the Committee have not pronounced a judgment without having had before them the information gained from the experience of other countries. They have been anxious to arrive at such a conclusion as, while it should preserve the character of the Faculty as a learned profession, should make its privileges free to all. If they have been more lax in their views than they can find precedent for, either in the history of the profession in Scotland, or in the practice of the modern states of Europe, their excuse is, that they are unable to recommend rigid and exclusive tests until they find that all other and gentler means have been tried and exhausted.

With the general grounds on which preceding Committees rested their proposals, they entirely agree. They differ only as to the amount of compulsion necessary to enforce them. The Committee, like their predecessors, also insist upon the necessity of general education, for the same reasons. The profession is one of trust and honour. The exercise of its functions may lead the advocate into every branch of human knowledge. It is essentially a *learned* profession; and the Faculty of Advocates in Scotland has ever held a high position as to learning among the Faculties of Law of Europe. Amid the general diffusion of education, and the increased knowledge of all ranks, it is certainly incumbent upon a body so renowned to maintain a character for learning, upon other grounds than traditionary respect. It is possible to treat law as a mere mechanical art, and it is also possible to argue a case without knowing Latin; and if it were enough to become

a body of mere case lawyers, contented, in argument, with simply placing before the Court an accumulation of Scotch authorities, applied with the tact derived from a knowledge of practice, then philosophical knowledge would not only be useless, but an encumbrance. Treating law on this footing, the mind is apt to confuse the law itself with the forms and routine which alone too often constitute the study and the practice of a lifetime. Such have not hitherto been the principles upon which the Scottish bar has acted; and these are not the times for lowering the standard of qualification. America is an example and a warning.*

It is the duty of the Faculty to save "the people and the courts, who are chiefly the sufferers,"† from the pleading of ignorant and uninstructed minds. It is surely superfluous to discuss the question as to the propriety of an aspirant to the profession of an advocate, possessing a certain amount and quality of knowledge, which it is not so much a credit to possess, as a disgrace to be ignorant of. If a mere acquaintance with cases and forms of process cannot make a lawyer, it is the duty of the Faculty to guide the student to the studies that will do so. "This profession," says Lord Woodhouselee, "more than any other, requires an enlarged acquaintance with human nature—a knowledge not to be gained but by philosophical study. It also demands an extensive knowledge of the various arts which constitute the occupations of mankind, and, of course, give rise to a great proportion of those legal questions which occupy courts of justice. The talent of speaking, too, on which the professional eminence of a lawyer greatly depends, is incredibly improved by general scholarship, which supplies his mind with stores of apposite illustrations of his subject." But beyond all this, such a training carries along with it a dignity and elevation of mind which raises its possessor above the mean incidents of his profession, and preserves honourable and moral distinctions unvitiated, in the exercise of an art too often employed to confound and obliterate them.

Influenced by these considerations, the Committee are unanimously of opinion that evidence both of general and legal

* *Supra*, p. 32. † *Supra*, p. 52.

learning should be afforded by every candidate for admission to the bar. *The proper evidence of general scholarship is a university degree*, and if evidence of that be produced, no examination need be made as to general education. But such a test as this the Committee were unwilling to require absolutely and exclusively, as it might bear hard upon persons of humble family and straitened circumstances, whose means have denied them the advantage of a college education. Such men ought to have the door of admission open to them as freely as to their more wealthy and aristocratic rivals; and many such have achieved success, and shed lustre upon the profession. Several, too, have been drafted into the legal from other professions, which they have quitted after prosecuting them for years. If such persons possess the requisite abilities and knowledge, it would be a hardship to them and a loss to the Faculty, that they should be refused access to the bar merely because of the want of a university education in their youth.

To avoid these evils, the Committee are prepared to recommend that, as regards general scholarship, it should not be indispensable to produce any certificates of university education. All that ought to be insisted upon is proof of the possession of the requisite liberal education. It is a matter of indifference in what way that may be acquired,—whether by private study or public instruction. And having arrived at this conclusion, the remaining point for determination was the mode of ascertaining the fact. In regard to this, it seemed to the Committee to be the most expedient course to subject the candidate to an examination upon certain branches of general knowledge conducted by men to whose hands it may be reasonably and safely entrusted. By an arrangement with persons of learning, as will be explained immediately, the Committee believe that an efficient board of examinators could be procured in whom the Faculty would have confidence. And the subjects to which they would confine the examination would be the following four—*First*, Latin; *secondly*, Greek; *thirdly*, ethical and metaphysical philosophy; *fourthly*, logic, or (in the option of the candidate) mathematics.

It will be observed that in this list of subjects the whole wide department of natural Science is not included; and the reason is, that the Committee wished these examinations to be restricted to such subjects as might fairly test general scholarship, without making them so severe as they are in other countries. If there has been any doubt, it is in reference to Greek, for which it has been suggested that the candidate might, in his option, substitute two modern languages, one of them being German—the language in which so many learned treatises on Civil and general law are now written; and the other, French, or Italian, or Spanish.

The Committee have had some difficulty in dealing with this suggestion, and they think it better, instead of coming to a resolution on the subject, to report the matter for the decision of the Faculty. Although, therefore, they have stated Greek as one of the subjects on which the candidate shall be examined, they do so with the explanation, that they have come to no judgment adverse to the proposal of allowing the candidate an option in accordance with the above suggestion.

It is no doubt quite possible to be a Scotch lawyer without a knowledge of the Greek language. The point, however, is not, what is barely sufficient to sustain the position of an advocate, but what is the best means of cultivating the understanding in the years devoted to study. The study of the Greek language is in itself a wholesome and bracing exercise to the mind, and opens up a literature as rich and varied, and a history as instructive as any of the modern languages of Europe. It is now taught in every grammar school of Scotland; it was formerly cultivated with much success in this country.* It is the language from which the names and terms of art in natural science are derived. No doubt much of it may be, and is, forgotten in later life; and it may too be difficult to turn the knowledge of it to pecuniary account; but the beneficial influence of its study is great notwithstanding; and persons who in advanced years cannot read a page of Greek, are yet all the better in liberality of mind and cultivation of taste that they spent in its study a short period of their student years.

* See M'Crie's Notes to Life of Knox and Life of Andrew Melville.

"With hardly any exception," says Lord Brougham, "the great things of poetry and eloquence have been done by men who cultivated the exemplars of Athenian genius. Whether we regard the political or forensic orations of the Romans, the style, both in respect of the reasoning and the ornaments, is wholly unfit for the more severe nature of modern affairs both in the senate or at the bar. It is altogether otherwise with the Greek masters. Changing a few phrases which the difference of religion and of manners might render objectionable—moderating in some degree the virulence of invective, especially against private character, to suit the chivalrous courtesy of modern hostility—there is hardly one of the political or forensic orations of the Greeks that might not be delivered in similar circumstances before our senate or tribunals. But if a further reason is required for giving the preference to the Greek orators, we may find it in the greater diversity and importance of the subjects upon which their speeches were delivered. Besides the number of admirable orations and of written arguments upon causes merely forensic, we have every subject of public policy, all the great affairs of state successively forming the topics of discussion."

It is not intended in any way to depreciate the importance of the modern languages of Europe. The languages in which Savigny and Pothier have written can never be unimportant to a lawyer. But the acquisition of French at least is now so much a matter of course, that it may be expected to be made without anything like compulsion.

### 2. *Legal Education.*

But while the Committee are thus willing to dispense with any university curriculum in reference to general education, they are unanimously of opinion that there ought to be a short university course of legal study. It would be useless to recommend so extensive a curriculum as that required for the bars of other countries, because our universities do not possess the adequate legal chairs. But in so far as our means of education in law extend, the Committee do not see any reason why attendance should not be made compulsory.

Some of the Committee at first were of opinion that the course should consist, in so far as compulsory, of two sessions in the study of the civil law only, on the ground that the law of Scotland, being that by which the future advocate must earn his subsistence, would take care of itself; but all of the Committee were of opinion that at least there should be one session's attendance on the lectures at a civil-law class; and as civil law, though at present the subject of examination, is for the first time to be made a course of study, the Committee beg to explain their reasons for the recommendation.

The civil law constitutes the basis of nearly all the law of Europe, and is the best substitute for lectures on general jurisprudence. The circumstances of the present times prove the truth of Lord Stairs' opinion, that "no man can be a knowing lawyer in any nation who hath not well pondered and digested in his mind the common law of the world." The constant changes in the law which every recurring year produces—the daily schemes for the assimilation of the laws of our own country with that of England—the proposal, upon which a royal commission has just reported, to import into our law from the continent and America, a new section in the law of partnership, all show that in following out the views of our great institutional writer, we are not merely indulging the liberal curiosity of the scholar, but acquiring information for the improvement of our own institutions, and hints towards moulding old laws to the natural progress of society. Every year furnishes new combinations in the arts and trading speculations of a great commercial country; and every year are our lawyers obliged to learn some new chapter of their science. To do this without a preparatory training in early years, is to do it at a disadvantage at the best, and it is attended with such difficulties, that it is often imperfectly performed. The modern law of joint-stock companies is a novelty; and from the constant intercourse of nations, the intricate subject of international law, which furnished scope for the abundant learning of the civilians of the seventeenth century, has grown recently into vast importance. The law accommodates itself to change in the usages of society—to the increase and improvements of

property—to new kinds of property, and to new views in the public policy of the kingdom. "'*Quicquid agunt homines*' is the business of courts; and as the usages of society alter, the law must adapt itself to the various situations of mankind." * How much more easily could a lawyer thus change with the times, if in early years he had studiously gone through a course of general law, and been trained in that kind of systematic instruction which is given abroad. The consequences of the total want of such training are illustrated in the decline of the American bar.†

In requiring the Civil law as an essential branch of the legal education of a Scottish advocate, the Committee are only enforcing the rule sanctioned by the prescription of three centuries. They are by no means desirous of attaching an undue degree of importance to its study, or to claim for it the undistinguishing veneration with which the Faculty were in former days asked to regard it. They claim for it only such a degree of attention as it is entitled to from its merits—merits which have been acknowledged by men whose partiality for their own common law gives weight to their testimony.‡

A system which has contributed so much to give form

* Lord Mansfield, in 3 Doug. 373.

† "Law is not the product of the wisdom of some one man, or society of men, in any age, but of the wisdom, counsel, experience, and observation of many ages of wise and observing men. . . . When the subject of any law is single, the prudence of one age may go far at one essay to provide a fit law; and yet even in the wisest provisions of that kind, experience shows us that new and unthought of emergencies often happen which successively require new supplementary abatements or explanations. But the body of laws which concern the common justice applicable to a great kingdom, is vast and comprehensive, consists of infinite particulars, and must meet with various emergencies, and therefore requires much time and much experience, as well as much wisdom and prudence, successively to discover defects and inconveniences, and to apply apt supplements and remedies for them."—*Sir Matthew Hale.*

‡ "The Roman law forms no rule binding in itself on the subjects of these realms; but in deciding a case UPON PRINCIPLE, where no direct authority can be cited from our books, it affords no small evidence of the soundness of the conclusion at which we have arrived, if it prove to be supported by that law—the fruit of the researches of the most learned men, the collective wisdom of ages, and the groundwork of the municipal law of most of the countries of Europe."—(Per Chief-Justice Tindal, Acton *v.* Blundell, 12 Meeson and Welsby, p. 324.)

and consistency to the law of Scotland could not be overlooked in an enlightened system of legal education. But independently of its special claims on the notice of a Scottish lawyer, the jurisprudence of the greatest nation of antiquity must possess an imperishable interest in the eyes of those who regard law as a science, every step in the development of which has its value and importance, as tending to accomplish the establishment of sound principles of legislation, and the correct administration of justice. Accordingly, it has been nearly the universal rule of all the states of Europe to enforce upon the advocate of the supreme courts the study, not merely of the jurisprudence of the locality, but also that of the Civil law; not so much for its immediate use in practice, as because its study humanises the mind—gives a larger and more comprehensive view of jurisprudence, and furnishes at the same time the many informing aids that are to be derived from the history of other times.

With these views, the Committee came ultimately to be of opinion, that the following course of legal education should be prescribed:—

Two years' attendance at a university, during which the following classes must be attended. *First*, One session at Civil law; *Secondly*, One session (during a separate year) at the law of Scotland; *Thirdly*, During either of the two years, or a third year, another session at one of these law classes, or at the class of conveyancing; and *Fourthly*, During either of the two years, or a third year, one session at the class of medical jurisprudence.

### 3. *Board of Examinators.*

1. The Board of Examinators in general scholarship to consist of six members of Faculty, three to be a quorum. Of these six, two shall go out annually. The object of the Committee in limiting the number, and giving a permanent character to the board by providing for only two vacancies annually, is to secure the services of gentlemen who will, by the experience of several years, have acquired the requisite tact and knowledge for the proper discharge of the duty.

The Board of Examinators shall select such persons of learning, in number not less than three, by whom the examination in general scholarship provided for shall be made. These persons to be paid a fee, which the candidate shall have previously deposited with the librarian of the Faculty. This examination shall take place in presence of the Board of Examinators, and these three persons, whose assistance the Board are to take, shall deliver a written report of their opinion as to the candidates' qualifications. The Board of Examinators shall thereupon, after giving due weight to the report, proceed to decide as to whether or not the trials should be approved of.

2. The same Board of Examinators shall also be examinators in law, with the addition of the law professors in the university—one of whom, at least, to be present at each examination. Four to be a quorum. The professors who are members of Faculty to have a vote. The professors to be paid a fee, to be deposited by the candidates with the librarian as above. The senior law professor present, who is a member of Faculty, to be chairman at the examination.

### 4. *Mode of Examination.*

1. *Examination in General Knowledge.*—After the petition of a candidate is presented, and a remit made by the Court to the Faculty for his examination, the examination shall take place first in general scholarship. If a university degree be possessed by the candidate, that shall be held sufficient without further examination, and his trials dispensed with.

The following degrees shall alone be recognized:—1. M.A. of any of the five Scotch Universities; 2. M.A. or B.A., or Bachelor, or Doctor of Civil Law of Oxford, Cambridge, and Trinity College, Dublin. Degrees which are evidence of the same amount of learning as the Scotch degree of M.A., will be recognised from the universities of London, Durham, the Queen's University in Ireland, and from such foreign universities as may on farther enquiry be fixed on.

2. If the candidate do not produce evidence of having graduated at one of these universities, he shall be remitted to

the board of examinators to be examined in the mode already stated, on the subjects above specified.

If he possess a degree, or if the trials above specified be found sufficient, the candidate shall be remitted to his legal studies, as at present, for a year. And in order to do full justice to the candidate himself, and secure for him as far as possible that concentration of attention, without which no study can be useful, the Committee propose that during the year preceding the law examination the candidate shall be engaged in no mercantile or legal business. It is thought that in requiring this, the best interests of the candidate himself will be promoted; while the Faculty will only be reviving an old and useful regulation. It was formerly the custom for young men, after undergoing their preliminary trials, and before coming to the bar, to render their studies useful by seeing the practical application of the law in Court. This, "in the quaint language of the age, was called 'haunting the formes and courtes;' and after the period of this haunting was expired, and upon due proof being given that they had completed a regular course of legal study, they were admitted advocates, and enjoyed the privilege of practising before the Court."*

3. *Examination in Law.*—On the expiration of the year, the candidate, on production of certificates of attendance at law classes, as above specified, shall be taken upon his trials, first on the Civil law, and then on the law of Scotland.

The examination in the Civil law to be made upon the Institutes of Justinian, with such elementary treatise as may be hereafter selected; and also upon the title in the Pandects, "*De diversis regulis juris antiqui*"—(Lib. L. tit. xvii.)—being a collection of those legal maxims, nearly all of which have been adopted into the Scotch law, and which it would be extremely profitable for every lawyer to learn. It will be necessary, however, that this title be studied along with an approved commentary, on which also the examination is to be made. The Thesis upon a title in the Civil law to be prepared as at present, and to be certified as the candidate's own composition.

It is proposed that the text-book for the examination on

* Tytler's Life of Craig, p. 21.

Scotch law shall be Bell's Principles, in place of Erskine's Principles—so much of the latter having been superseded by subsequent legislation.

*5. Time of commencement of new Rules.*

These regulations, it is proposed, should commence on 1st November 1855.

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The chief novelty in the preceding recommendations is in accepting evidence of general scholarship, however acquired, as equivalent to a regular university education. For reasons already stated, the Committee do not think that anything more rigid should be enforced. They have aimed, at present, at a specific good, without, however, precluding themselves from seeking those farther changes which may be expedient in consequence of the anticipated establishment of additional legal chairs in the universities, or which may be suggested by a larger experience.

PATRICK FRASER, *Convener.*

## APPENDIX B.—No. 1.

### Extension of the Scottish Universities.

On the 19th July 1853, a Meeting of Gentlemen favourable to the extension of the Scottish Universities, was held in the George Street Hall, the Sheriff of Midlothian in the Chair, when the following Resolutions were unanimously agreed to:—

I. That in Scotland, while the public wealth has greatly increased since the date of the Establishment of its Universities, no corresponding addition has been made to their Endowments; but that, on the contrary, these are, in many instances, relatively much less than at a former period.

*Moved by Mr. Francis Russell, Advocate; and Seconded by Sir David Brewster, K.H., LL.D., Principal of the United College of St. Salvator and St. Leonard, St. Andrews.*

II. That there are important Branches of Study which have attracted the public attention through Courses of Popular Lectures, and otherwise, but for which no provision has yet been made in the Universities of Scotland; and that it is now most desirable, by the institution of additional Chairs, to secure for these subjects a higher and more systematic cultivation.

*Moved by Dr. Schmitz, Rector of the High School, Edinburgh; and Seconded by Mr. A. F. Irvine, Yr. of Drum.*

III. That the institution and endowment of such additional Chairs will be highly beneficial to the Community, by affording opportunities of mature study to able men devoted to pursuits of the highest importance, which, from their nature, cannot be directly remunerative, and for the prosecution of which there is no sufficient encouragement afforded by any of the learned Professions, or otherwise, in Scotland.

*Moved by Mr. James Lorimer, Advocate; and Seconded by the Rev. Dr. Hanna.*

IV. That while both in England and in Ireland large Public Grants have of late years been made for the Establishment of new Universities and Colleges, the interests of Scotland in this respect have received no such attention, and that even the recommendation of the small additional Endowments in the Report of the Commission on the Scottish Universities made in 1830, have not yet been carried out.

*Moved by Mr. James Campbell, Advocate; and Seconded by Mr. A. S. Logan, Advocate.*

V. That it will be highly conducive to the wellbeing of Scotland that the deficiencies thus existing in the highest of her Educational Institutions, be supplied, either by a Grant from the Exchequer, or by the private exertions of Scotchmen themselves.

*Moved by Mr. W. H. Thomson, Advocate; and Seconded by Mr. John Hunter, Auditor of the Court of Session.*

VI. That a Committee be appointed to consider the best means of carrying these Resolutions into effect, with power to add to their number.

*Moved by Mr. J. R. Stodart; and Seconded by Mr. Blackie.*

GENERAL COMMITTEE.

James Adam, Esq., Advocate.
Professor Anderson, Glasgow.
Patrick Arkley, Esq. of Dunninauld, Sheriff-Substitute of Edinburgh.
John Auld, Esq., W.S.
Sir David Brewster.
Graham Binny, Esq., W.S.
George Graham Bell, Esq., Advocate.
R. B. Blackburn, Esq., Advocate.
A. S. Blackie, Esq.
A. T. Boyle, Esq., Advocate.
Professor Blackie.
The Rev. Thomas Buchanan, Minister of Methven.
J. H. Burton, Esq., Advocate.
W. R. Baillie, Esq., W.S.
Lord Cockburn.
James Campbell, Esq., Advocate.
N. C. Campbell, Esq., Advocate.
Simon Campbell, Esq., S.S.C.
John Clapperton, Esq., Merchant, Edin.
A. R. Clark, Esq., A.D.
Thomas Cleghorn, Esq., A.D.
A. S. Cook, Esq, Advocate.
J. T. Gibson Craig, Esq., W.S.
Alexander Currie, Esq., Sheriff of Banff.
Archibald Davidson, Esq., Sheriff of Aberdeen.
George Dundas, Esq., Sheriff of Selkirk.
Alex. M. Dunlop, Esq., M.P.
William Duncan, Esq., S.S.C.
Prof. Ferguson, King's College, Aberdeen.
Professor Fleming, New College.
Professor Fraser, New College.
Bailie Fyfe.
Edward S. Gordon, Esq., Advocate.
J. T. Gordon, Esq., Sheriff of Midlothian.
John Grahame, Esq., Advocate.
George Greig, Esq., W.S.
F. Hallard, Esq., Advocate.
Rev. Dr. Hanna.

F. L. M. Heriot, Esq. of Ramornie.
Thomas Heriot, Esq., Merchant, Edin.
James Hope, Esq., W. S., Deputy-Keeper of the Signet.
Donald Horne, Esq. of Langwell.
Leonard Horner, Esq.
John Hunter, Esq., W.S., Auditor of Court of Session.
John Inglis, Esq., Dean of the Faculty of Advocates.
A. F. Irvine, Esq., Yr. of Drum.
Lord Ivory.
Andrew Jamieson, Esq., Sheriff-Substitute of Edinburgh.
Charles Jenner, Esq., Merchant.
Sir Wm. Johnston of Kirkhill.
John Boyd Kinnear, Esq., Advocate, Yr. of Kinloch.
John Kirk, Esq., W.S.
George Lees, Esq., LL.D.
James Leslie, Esq., C.-E.
A. S. Logan, Esq., Advocate.
James Lorimer, Esq., Advocate.
J. F. M'Farlan, Esq., Druggist, Edin.
Robert Macfarlane, Esq., Advocate.
Edward F. Maitland, Esq., Sheriff of Argyle.
George Moir, Esq., Advocate.
George Monro, Esq., Advocate.
Professor More.
James Montgomerie, Esq., Advocate.
Bailie Morrison.
Charles Morton, Esq., W.S.
J. Burn Murdoch, Esq., Yr. of Gartincaber.
David Mure, Esq., Sheriff of Perth.
John Murray, Esq. of Murrayshall.
Mark Napier, Esq., Sheriff of Dumfries.
Charles Neaves, Esq., Advocate.
James Peddie, Esq., W.S.
W. A. Parker, Esq., Advocate.
G. H. Pattison, Esq., Advocate.
David Rhind, Esq., Architect.
Joseph Robertson, Esq., Editor of "Edinburgh Evening Courant."
George Ross, Esq., Advocate.
Alex. Russell, Esq., Editor of "Scotsman."
Francis Russell, Esq., Advocate.
Dr. Schmitz, Rector of the High School.
C. F. Shand, Esq., Advocate.
James Souter, Esq., W.S.
Henry Stephens, Esq.
James Stirling, Esq., C.-E.
J. R. Stodart, Esq., W.S.
Archd. Thomson, Esq., Merchant, Edinburgh.
James Gibson Thomson, Esq., Merchant.
W. H. Thomson, Esq., Advocate.
Henry Tod, Esq., W.S.
W. Gillies Tytler, Esq., Advocate.
John Whitehead, Esq., S.S.C.
Lord Wood.
John Wood, Esq., Advocate.
Robert Wyld, Esq., Yr. of Gilston.
George Young, Esq., Sheriff of Inverness.
The Rev. Robert Young, Minister of Auchterarder.

At a Meeting of Committee, of this date, (10th November 1853,) it was resolved to form an Association for the purpose of securing the objects contemplated in the above Resolutions.

The undersigned were appointed Secretaries, with instructions, *inter alia*, to transmit copies of the foregoing Resolutions to all the Principals and Professors of the Universities of Scotland, and to solicit their co-operation.

NOTE.

The general objects of the Association, as embodied in the Resolutions, are so to enlarge the sphere of the Scottish Universities, as that, without departing from the Professorial system, they shall at

once meet the growing wants of the community by a more extensive system of teaching, and offer the inducement of adequate remuneration for the cultivation of those departments of Philosophy, Scholarship, and Science, which, from their very nature, cannot safely depend on popular sympathy. The details of the scheme will, of course, be matter for anxious consideration in future. In the meantime, it is suggested that the following subjects possess such importance to the community as to merit that they should be properly represented, and, if possible, efficiently taught in the Universities, either by means of new Chairs, or of those at present existing.

1. History of Philosophy, Ancient and Modern.
2. Metaphysics, apart from Logic and Ethics.
3. Philosophy of History.
4. Science and History of Politics.
5. Political Economy.
6. Law of Nature and Nations, illustrated by Modern International Law and Diplomacy.
7. History of Colonies, and the Art of Colonization in Ancient and Modern times.
8. Comparative Philology.
9. The Science of Races, (Ethnology.)
10. English Language and Literature.
11. Modern Continental Literature,—Teutonic.
12. Modern Continental Literature,—Romanic.
13. Universal History Chair, to be converted into a Chair of Scottish History.
14. History of England.
15. History of Art, illustrated by the History of Painting, Sculpture, and Architecture, in connexion with the Architectural Institute and Royal Academy, &c.
16. Geology and Mineralogy.
17. Agricultural Chemistry.
18. Technology, or Science of Manufactures, (in Glasgow & Edinburgh.)

To procure additional Endowments for such of the existing Chairs as are inadequately provided for, will also be one of the prominent objects of the Association.

(Signed) JAMES LORIMER, Jun., } *Joint*
CHARLES MORTON, } *Hon. Secs.*

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indirect encouragement. And as it is impossible that in any community, however enlightened, those studies, the nature of which demands that they should be in advance of popular thought, should be adequately supported by popular sympathy, it seems to your Memorialists indispensable that provision should be made for their prosecution by permanent endowment.

The Scottish Universities having hitherto been conducted under the Professorial system, with a degree of success beyond what could have been expected from the extent of their endowments, your Memorialists regard it as of the utmost importance that the same system should be continued, and its efficiency extended and strengthened, with the view of rendering these Institutions commensurate with the wants of the age.

In these circumstances, your Memorialists respectfully submit to Her Majesty's Government, that aid should be afforded to the Universities of Scotland, by a grant of Public Money, for the more liberal endowment of such existing Chairs as are at present inadequately provided for; and also for the endowment of such additional Chairs as may be requisite to fulfil the following objects, viz.:—

1*st*,—Of rendering the Scottish Universities centres around which a learned class may form itself;—and

2*d*,—Of placing them, as Educational Establishments, on something like a footing of equality with the Universities of other countries where the Professorial system prevails.

Your Memorialists humbly think that they have pointed out an object at once requiring and deserving the liberal aid of Her Majesty's Government, and they respectfully represent that the grant of an annual sum, such as has been recently allotted to the endowment of the Queen's Colleges and Queen's University in Ireland, would place the Scottish Universities in a condition of efficiency, and accomplish the purposes for which your Memorialists have formed this Association.

Signed in name and by authority of the Association,

JAMES LORIMER, Jun.,
CHARLES MORTON, } *Hon. Secs.*

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